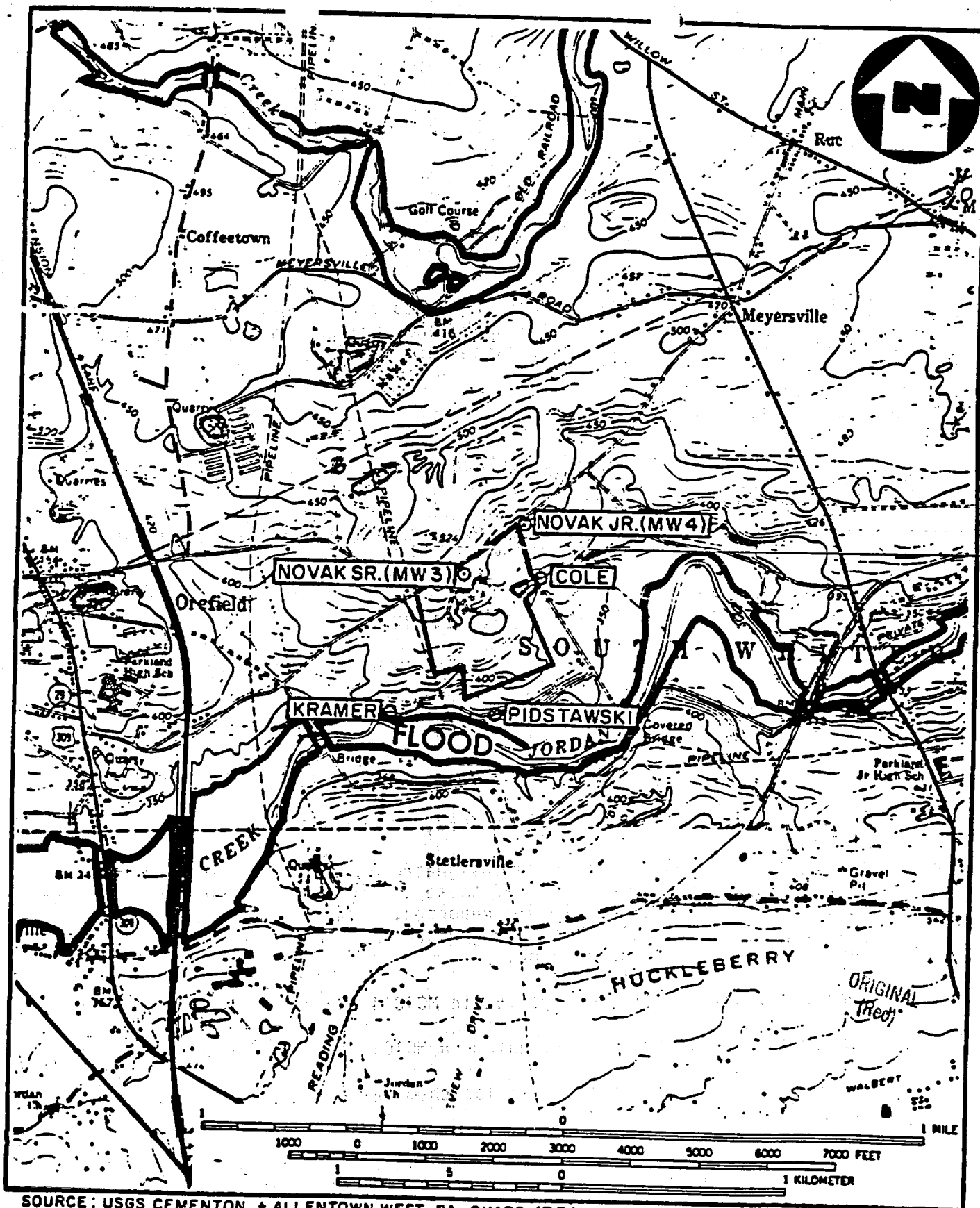


SAMPLE LOCATION MAP
NOVAK LANDFILL, SOUTH WHITE HALL TWP., PA.
 (NO SCALE)



SOURCE: USGS CEMENTON, + ALLENTOWN WEST, PA. QUADS. (7.5 MINUTE SERIES)

WELL LOCATION MAP

NOVAK LANDFILL, SOUTH WHITE HALL TWP., PA.

SCALE 1:24000

FIGURE 5

NUS
CORPORATION

A Halliburton Company

201007

6.2.2 Inorganic Data Lab Case 2874

6.2.2.1 Introduction

The findings offered in this report are based upon a review of all available sample data, blank results, matrix spike and duplicate analysis results, calibration data, and quality assurance documentation.

6.2.2.2 Qualifiers

It is recommended that this data package be utilized only with the following qualifier statements:

- The results which may be qualitatively questionable are listed below:

<u>Constituent</u>	<u>Samples With Questionable Results</u>
Aluminum	MC4013, MC4014, MC4086
Selenium	MC4014, MC4015, MC4057, MC4058, MC4059 MC4086, MC4088, MC4092
Cadmium	MC4087, MC4089
Nickel	MC4013, MC4015, MC4058, MC4085, MC4088
Tin	MC4015, MC4057, MC4087, MC4089

- The aforementioned results were designated questionable since there is evidence to doubt the presence of these constituents at any concentration less than or equal to the levels reported. However, it can be assumed that concentrations significantly greater than the levels reported for these samples cannot be present.
- Actual detection limit for cyanide in MC4014 may be higher than reported.
- Actual detection limit for selenium in MC4087 may be higher than reported.
- Tin results for samples of a similar chemical and physical nature to MC4087 may be biased high.
- The reported results for iron and vanadium in MC4085 may not accurately reflect the average concentrations of these constituents.
- The reported result for zinc in MC4087 may not accurately reflect the average concentration of this constituent.

Site Name: Novak Sanitary Landfill
TDD No.: F3-8405-11

6.2.2.3 Findings

- ° Field blank analysis revealed the presence of cadmium and selenium at levels sufficient to question the aforementioned results for these parameters.
- ° Lab blank analysis revealed the presence of tin, nickel, and aluminum at levels sufficient to question the aforementioned results for these parameters.
- ° Low matrix spike recovery was reported for selenium in MC4087 and cyanide in MC4014.
- ° High matrix spike recovery was reported for tin in MC4087.
- ° High relative percent difference results were reported for iron and vanadium in MC4085 and zinc in MC4087 indicating sample non-homogeneity.

6.2.2.4 Summary

This Quality Assurance Review has identified the following areas of concern; field and lab blank contamination, matrix interferences and sample non-homogeneity.

Please see the accompanying support documentation appendix for specifics on this Quality Assurance Review.

Report prepared by Debra K. White: _____ Date: 8/6/84

Report reviewed by E. Ramona Trovato: _____ Date: 8/14/84

ORIGINAL
(Red)

201009

**SAMPLE DATA SUMMARY
TARGET COMPOUNDS**

F3-8405-11

TDD Number
EPA Number

Site Name NEVAK
Date of Sample 6-26-84

☐ Organic ☒ Inorganic

Compounds Detected

Sample Number	Sample Description and Location	Phase	Units	Arsenic	Barium	Beryllium	Chromium	Cobalt	Copper	Iron	LEAD	Manganese	Nickel	Remarks
MC4013	MW 1	AQ	µg/L	211	960		2		24,200	25	310	110		
MC4014	MW 2	AQ	µg/L	168	183	3.5			16,600	15	4010			
MC4015	MW 3	AQ	µg/L								300	43		
MC4017	MW 4	AQ	µg/L											
MC4018	Cole	AQ	µg/L								43			
MC4019	Pickstone Li	AQ	µg/L											
MC4015	Kramer	AQ	µg/L	1270	1270				34,200		1310	61		
MC4016	Pond	AQ	µg/L	180	11				1570		1440			
MC4017	Pond	SOL	mg/kg	10,400	3	0.6	0.07	9.3	11	23,500	9	470	16	
MC4018	Leachate Sup.	AQ	µg/L	3520	44	25	4.0	23	107	34,000	8	38,000	78	
MC4019	Leachate Sup.	SOL	mg/kg	12,900	2.5	9	0.8	0.2	10	14	31,400	9	250	21
MC4020	Blank	AQ	µg/L											
MC4021	Blank	SOL	µg/L			1.0								
MC4022	Leachate Sup.	AQ	µg/L	12,000	25	1150	2.2	27	6.2	72,700	29	3460	150	

NOTE: For a review of this data and non-target, tentatively identified compounds, please see the Analytical Quality Assurance section of this report.

Denotes data of questionable qualitative significance based upon quality assurance review of data.

201010

TDD Number F3-8405-11

☐ Organic ☒ Inorganic

Site Name Nevak
Date of Sample 6-75-

Compounds Detected

[illegible]

NOTE: For a review of this data and non-target, tentatively identified compounds, please see the Analytical Quality Assurance section of this report.

◇ Denotes results of questionable qualitative significance based upon quality assurance review of data.

TIID Number

☐ Organic

Date of Sample 6-26-87

Compounds Detected

[illegible]

NOTE: For a review of this data and non-target, tentatively identified compounds, please see Analytical Quality Assurance section of this report.

◇ Denotes results of questionable qualitative significance, based upon quality assurance review of data.

11-5068-11

EPA Number

SAMPLE A SUMMARY TARGET COMPOUNDS

Site Name

Yakov

Date of Sample

44-3886-9

Organic

Inorganic

Compounds Detected

[illegible]

NOTE: For a review of this data and non-target, tentatively identified compounds, please see the Analytical Quality Assurance section of this report.

◆ Denotes results of questionable qualitative significance based upon quality assurance review of data.

20101

11-545-11

Date of Sample

Inorganic

Inorganic

[illegible]

2014

For a review of this data and non-target, tentatively identified compounds, please see the Analytical Quality Assurance section of this report.

Denotes re/ of questionable qualitative significance based upon quality assurance rev/ of data.

TDD Number 02405-11
 EPA Number 11-2048

SAMPLE DATA SUMMARY
TARGET COMPOUNDS

☒ Organic ☐ Inorganic

Site Name North Canterbury LI
 Date of Sample 12-2-2001

Compounds Detected

Sample Number	Sample Description and Location	Phase	Units	1,1,1-trichloroethane	Toluene	1,1,2-trichloroethane	1,1,2,2-tetra-chloroethane	1,1-dichloro-ethylene	Carbon disulfide	Remarks
0001	W001	AQ	1%L	1.10	17.27	2.2	0.01	0.11	0.11	
0002	W002	AQ	1%L	10	6.3	13	9	2.6	2.6	
0003	W003	AQ	1%L							
0004	W004	AQ	1%L							
0005	W005	AQ	1%L							
0006	W006	AQ	1%L							
0007	W007	AQ	1%L							
0008	W008	AQ	1%L							
0009	W009	AQ	1%L							
0010	W010	AQ	1%L							
0011	W011	AQ	1%L							
0012	W012	AQ	1%L							
0013	W013	AQ	1%L							
0014	W014	AQ	1%L							
0015	W015	AQ	1%L							
0016	W016	AQ	1%L							
0017	W017	AQ	1%L							
0018	W018	AQ	1%L							
0019	W019	AQ	1%L							
0020	W020	AQ	1%L							
0021	W021	AQ	1%L							
0022	W022	AQ	1%L							
0023	W023	AQ	1%L							
0024	W024	AQ	1%L							
0025	W025	AQ	1%L							
0026	W026	AQ	1%L							
0027	W027	AQ	1%L							
0028	W028	AQ	1%L							
0029	W029	AQ	1%L							
0030	W030	AQ	1%L							
0031	W031	AQ	1%L							
0032	W032	AQ	1%L							
0033	W033	AQ	1%L							
0034	W034	AQ	1%L							
0035	W035	AQ	1%L							
0036	W036	AQ	1%L							
0037	W037	AQ	1%L							
0038	W038	AQ	1%L							
0039	W039	AQ	1%L							
0040	W040	AQ	1%L							
0041	W041	AQ	1%L							
0042	W042	AQ	1%L							
0043	W043	AQ	1%L							
0044	W044	AQ	1%L							
0045	W045	AQ	1%L							
0046	W046	AQ	1%L							
0047	W047	AQ	1%L							
0048	W048	AQ	1%L							
0049	W049	AQ	1%L							
0050	W050	AQ	1%L							
0051	W051	AQ	1%L							
0052	W052	AQ	1%L							
0053	W053	AQ	1%L							
0054	W054	AQ	1%L							
0055	W055	AQ	1%L							
0056	W056	AQ	1%L							
0057	W057	AQ	1%L							
0058	W058	AQ	1%L							
0059	W059	AQ	1%L							
0060	W060	AQ	1%L							
0061	W061	AQ	1%L							
0062	W062	AQ	1%L							
0063	W063	AQ	1%L							
0064	W064	AQ	1%L							
0065	W065	AQ	1%L							
0066	W066	AQ	1%L							
0067	W067	AQ	1%L							
0068	W068	AQ	1%L							
0069	W069	AQ	1%L							
0070	W070	AQ	1%L							
0071	W071	AQ	1%L							
0072	W072	AQ	1%L							
0073	W073	AQ	1%L							
0074	W074	AQ	1%L							
0075	W075	AQ	1%L							
0076	W076	AQ	1%L							
0077	W077	AQ	1%L							
0078	W078	AQ	1%L							
0079	W079	AQ	1%L							
0080	W080	AQ	1%L							
0081	W081	AQ	1%L							
0082	W082	AQ	1%L							
0083	W083	AQ	1%L							
0084	W084	AQ	1%L							
0085	W085	AQ	1%L							
0086	W086	AQ	1%L							
0087	W087	AQ	1%L							
0088	W088	AQ	1%L							
0089	W089	AQ	1%L							
0090	W090	AQ	1%L							
0091	W091	AQ	1%L							
0092	W092	AQ	1%L							
0093	W093	AQ	1%L							
0094	W094	AQ	1%L							
0095	W095	AQ	1%L							
0096	W096	AQ	1%L							
0097	W097	AQ	1%L							
0098	W098	AQ	1%L							
0099	W099	AQ	1%L							
0100	W100	AQ	1%L							

ORIGINAL (Red)

20101

For a review of this data and non-target, tentatively identified compounds, please see the Analytical Quality Assurance section of this report.
 Denotes results of questionable qualitative significance based upon quality assurance review of data.

Site Name: Novak Sanitary Landfill
TDD No.: F3-8405-11

6.2 Quality Assurance Review

6.2.1 Organic Data: Lab Case 2874

6.2.1.1 Introduction

The findings offered in this report are based upon a general review of the data for a volatile organics analyses of eleven aqueous samples. Sample data, target compound matching quality, blank analyses results, surrogate spike recoveries, matrix spike and duplicate analyses results, BFB tuning performance, tentatively identified compounds, standards performance, and calculations were examined in detail.

6.2.1.2 Qualifiers

It is recommended that this data package be utilized only with the following qualifier statements:

- All methylene chloride results except for sample C4422 may be questionable.
- All acetone results may be questionable.
- All 2-butanone (MEK) results except for samples C4406 and C4426 may be questionable.
- Positive results for the following target compounds may be questionable:

<u>Compound</u>	<u>Sample(s)</u>
- 1,2-dichloropropane	C4405, C4406
- styrene	C4405
- dichlorodifluoromethane	C4405
- 2-hexanone (MBK)	C4406, C4426
- trichlorofluoromethane	C4405
chlorobenzene	C4406, C4422
1,1,1-trichloroethane	C4405
benzene	C4422
- toluene	C4423

- Actual concentrations of the following compounds may be slightly less than reported by the laboratory:

<u>Sample</u>	<u>Compound</u>
C4406	2-butanone (MEK)
C4422	carbon disulfide

ORIGINAL
(Red)

201016

6.2.1.3 Findings

1. Methylene chloride in the laboratory blanks, field blank C4427, and method blank was of sufficient magnitude to question the presence of methylene chloride in all samples except C4422.
2. Acetone contamination of the laboratory blanks, field blank C4427, and method blank was of sufficient magnitude to question the presence of acetone in all samples.
3. MEK (2-butanone) in the laboratory blanks, field blank C4427, and method blank was of sufficient magnitude to question its presence in all samples except C4406 and C4426.
4. The presence of 1,2-dichloropropane in a laboratory blank, the field blank C4427, and the method blank was noted in sufficient quantity to question the 1,2-dichloropropane result in samples C4405 and C4406.
5. The styrene result in sample C4405 was questionable because of the presence of styrene in one laboratory blank. The spectra presented for confirmation was of poor matching quality.
6. Benzene was present in a laboratory blank, the method blank, and the field blank C4427 in sufficient magnitude to question the presence of benzene in sample C4422.
7. The presence of 2-hexanone (MBK) in sufficient quantities in field blank C4427 made the MBK result in sample C4406 questionable.
8. The chlorobenzene results in samples C4422 and C4406 were questionable because of the presence of chlorobenzene in sufficient quantities in one laboratory blank. The spectra presented for confirmation for sample C4422 was of poor matching quality.
9. Toluene was found in two laboratory blanks and the field blank C4427 in sufficient quantity to question the toluene result in sample C4423.
10. Dichlorodifluoromethane was noted in the quantitation list of sample C4406 at a concentration of 2.6 ug/l. Spectral confirmation was provided with the spectra for vinyl chloride for sample C4406 presented in the supplemental data requested of the laboratory. The two compounds are coeluting, and both are present in the spectra for vinyl chloride.
11. The following target compounds identified and quantified as hits may be questionable due to poor or insufficient spectral matching quality:

<u>Compound</u>	<u>Sample</u>
dichlorodifluoromethane	C4405
trichlorofluoromethane	C4405
1,1,1-trichloroethane	C4405
styrene	C4405 - See Finding #5.
chlorobenzene	C4422 - See Finding #8
2-hexanone (MBK)	C4426

ORIGINAL
(Red)

201017

Site Name: Novak Sanitary Landfill
TDD No.: F3-8405-11

12. The following target compounds were not corrected for blanks, though the analyte appeared in at least one of the laboratory blanks, method blank, or field blank, C4427. Only confident target compounds are listed below. Actual concentrations of these analytes may be slightly less than the laboratory reported values.

<u>Compound</u>	<u>Sample</u>
2-butanone (MEK)	C4425
carbon disulfide	C4426

13. Two BFB tunes did not meet QC criteria. The BFB tune of 7/1/84 (10:41) contained deviations for four masses. Mass 95 was not the base peak as required, mass 174 was. Three other masses slightly exceeded QC limits; mass 75, mass 96, and mass 173. The BFB tune of 7/1/84 (1:40) had one mass exceeding QC criteria, mass 173.
14. 25 of 54 surrogate recoveries were outside of QC limits. The lab narrative stated the d-8 toluene spiking solution had deteriorated and corrective action would be taken.
15. All ten volatiles matrix spike and matrix spike duplicates had recoveries greater than QC limits. However, all relative percent difference calculations between the matrix spike and matrix spike duplicate were within QC limits. The laboratory believed the spiking solution had evaporated and concentrated, producing the previously mentioned results. The laboratory promised to take corrective action.
16. The laboratory reported results to four significant digits. This was not necessary and not supported by the precision of the method.

6.2.1.4 Summary

This Quality Assurance Review has identified the following areas of concern; blank contamination, poor target matching quality, BFB tuning performance outside of QC criteria, and surrogate and matrix spike recoveries exceeding QC limits.

Please see the accompanying support documentation appendix for specifics on this Quality Assurance Review.

Report prepared by Charles S. Sands, Jr. _____ Date: _____

ORIGINAL
(Red)

201018



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
OFFICE OF CHIEF COUNSEL - EASTERN REGION
1314 CHESTNUT STREET - 12th FLOOR
PHILADELPHIA, PA 19107-4786



DER-RECEIVED
HARRISBURG

Telephone: (215) 875-7486

*Novak Landfill
Lehigh Co.*

MAR 28 1985

March 27, 1985

The Honorable Anthony J. Mazullo, Jr.
Environmental Hearing Board
221 North Second Street
Third Floor
Harrisburg, PA 17101

RE: Novak v. DER,
Docket No. 84-425-M

Dear Mr. Mazullo:

This is to confirm my telephone request to you concerning the above appeal. I have been advised by Department staff that a sinkhole has formed in a corner of the Novak Landfill, in the middle of the area proposed for the large sedimentation basin, and that two additional holes are forming within several feet of the existing hole. As Mr. Karess has agreed in my telephone conversation with him concerning my intention to call you on this matter, this new event will certainly preclude use of the proposed area for a sedimentation basin, for various technical reasons.

Through Mr. Manduke, the Department attempted to show its concerns about solutioning and sinkhole formation at the site (Notes of Testimony, January 2, 1985, pp. 378-390). However, the Department believes that this recent event has additional implications for closure of the site and the disposition of the southernmost excavated trench. The Department therefore respectfully requests that the Board reopen the supersedeas hearings on the basis of newly acquired information; we believe that no Order should issue until the examiner has seen the site in person, and heard the parties' respective contentions as to the significance of the sinkholes.

Sincerely yours,

Kenneth A. Gelburd

KENNETH A. GELBURD
Assistant Counsel

ORIGINAL
(Red)

cc: Martin J. Karess, Esquire
Michael J. Sheridan, Esquire
Mr. Bruce Beitler
Mr. Joseph Manduke
Mr. Joseph Pomponi
HE 117

201019

March 27, 1985

DER-RECEIVED
MORRISTOWN

MAR 28 1985

SUBJECT: NOVAK LANDFILL
#100534
South Whitehall Township
Lehigh County

TO: Bruce Beitler
Regional Operations Supervisor

FROM: Joseph P. Pomponi
Field Operations Supervisor

Visit to the above site accompanied by Manduke and Rajkotia on March 27, 1985 pursuant to complaints of possible sink holes reveals following:

1. A sink hole was seen in the sedimentation pond.
The size was approximately three feet in diameter and four feet deep. Adjacent to the sink hole in a westerly direction existed two depressions which may indicate future sink holes. The visible sink hole lies in a direct line northeast of the sink hole at the treeline off the landfill property. It seems as if the new sinkholes are extending toward trenches 4 and 5.
2. Above the trench area, there has been deposited approximately five truck loads of foundry sand. The owner indicated that the foundry sand came from Tyler Pipe Company. Mixed with the sand was a sizeable amount of solidified tar.
3. The recycling area continues to be operated in a very haphazard manner. Mixed with recyclable cardboard and paper, evidence of plastic bags with nonrecyclable materials, one empty five gallon can labeled chromic acid, some type of residual waste in plastic bags and material scattered on and off the concrete pad. Better management of the bailed material was evident on this visit.

In as much as the new sink holes seem to be headed toward Trench 4, any new wastes dumped in this area may contribute toward a chronic groundwater problem.

JPP/bal

Original
(Reg)

201020

End of Sed. Pond

Pitson
Res

three lines
✓ boulders

4 to 5 feet deep
effect dry

2' x 2'

trench 5

depressions

trench 4

APP 65 feet

APP 30 feet

3" water

3 feet diameter
effect deep } APP.

Slope

N

NOVAK Landfill

3/27/85

201021



WALTER B. SATTERTHWAITE ASSOCIATES, INC.

11 N. FIVE POINTS ROAD
WEST CHESTER, PA 19380
(215) 692-5770

Walter B. Satterthwaite, P.G.
President
David F. Lakatos, P.E.
Principal

April 11, 1985

Mr. Joseph Manduke
Division of Solid Waste
Pennsylvania Department of
Environmental Resources
1875 New Hope Street
Norristown, PA 19401

~~CONFIDENTIAL~~
NOTED

APR 12 1985

Re: Novak Sanitary Landfill
South Whitehall Township
Lehigh County, Pennsylvania

Lehigh Co.

Dear Joe:

The two new monitor wells selected by Mr. Satterthwaite and yourself on April 9, 1985, as replacements for existing Monitor Wells Nos. 1 and 2 are scheduled to be drilled starting Monday, April 15, 1985. Based on our experience with drilling Monitor Wells Nos. 5 and 6, the installation of the new wells will take at least two full days.

Existing Monitor Wells Nos. 1 and 2 will be abandoned following the specifications outlined in Mr. Satterthwaite's letter of April 10, 1985, to DER, after the two new monitor wells are drilled.

Pending weather conditions and the completion of the new monitor wells, groundwater sampling will be done on April 23, 1985. If conditions change and sampling is postponed, we will promptly notify you.

Sincerely,

Rich Wroblewski

Richard T. Wroblewski
Project Geologist

RTW/eks

cc: Mr. Louis J. Novak
Martin J. Karess, Esquire
Michael J. Sheridan, Esquire
Mr. Joseph Pomponi
Mr. Jim Dolan

Original
(Red)

201022

~~CONFIDENTIAL~~
ROBERTSTOWN

April 11, 1985

APR 12 1985

SUBJECT: SITE INSPECTION
NOVAK LANDFILL #100534

Lehigh Co.

TO: Joseph P. Pomponi
Field Operations Supervisor

FROM: James A. Dolan
Solid Waste Specialist

As per your request, I inspected the subject landfill on April 10, 1985 for suspected dumping in the area of the demo fill.

There is no evidence of recent dumping in the demo fill area. The area is being levelled and large quantities of earth are being moved around. There was one (1) small pile of plywood and a drum off to one side, but no signs of large scale deposition of waste.

Several "rolloffs" were lined up to the west of the demo area, but I could not ascertain their contents.

JPP/bal

CC: Bruce Beitler
Gary Bonner ✓

UNCLASSIFIED
(Red)

007000

201023

April 29, 1985

SUBJECT: NOVAK LANDFILL #100534
 April 29, 1985
South Whitehall Township
Lehigh County

TO: Bruce Beitler
 Regional Operations Supervisor

FROM: Joseph P. Pomponi
 Field Operations Supervisor

Visit to the above site reveals the following:

Transfer and recycling area

At the time of the visit Truck - Valley Disposal License #CK-3057 had dumped its contents and left PAd area

Few minutes later Truck - Valley Disposal - dumped its contents in PAd area. Contents were noted to be approximately 80 to 95% household garbage including a small upholstered chair, trash and approximately 10% cardboard, paper and other recyclables. Truck License Number CX 21257 (#7) painted on truck.

Trash and litter scattered in area.

Visited the new well, 1A, located approximately 150 to 200 feet north of old Well 1 (North west end of trench area).

Static water level 112.5 feet to top of casing

Temperature 17°C

S.C. 1820

Total depth 135 feet

Well (1) old well - Casing broken at ground surface. Should be repaired or replaced to prohibit surface water from going directly into groundwater. Static water level 102 feet of casing, advised Mr. Novak.

ORIGINAL
 (Red)

201024

Location - Northeast end of trench area

Well 2A - approximately 100 feet north of old well #2

Static water level 116.5 feet

Temperature 17°C

S.C. 480

Total depth 175 feet

Attempt to measure water level in old Well 2 not successful.

Well 5 - Static water level 64.0 feet to top of casing

Well 6 - Static water level 78.8 feet to top of casing.

Duplicate V.O.A samples taken from

Well - 1 A

Well - 2 A

- 3 A (BLANK)

ORIGINAL
(Red)



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
OFFICE OF CHIEF COUNSEL - EASTERN REGION
1314 CHESTNUT STREET - 12th FLOOR
PHILADELPHIA, PA 19107-4786

DER-RECEIVED
NORRISTOWN

Telephone: (215) 875-7486

MAY 15 1985

May 14, 1985



Novak Landfill
Lehigh Co.

Mr. Anthony J. Mazullo, Jr.
Member
Environmental Hearing Board
221 North Second Street
Third Floor
Harrisburg, PA 17101

COPY

RE: Novak v. DER
Docket No. 84-425-M

Dear Mr. Mazullo:

This is in response to the May 10, 1985 letter of Michael Sheridan, counsel to Novak Sanitary Landfill, Inc. in the above matter. I have just been able to reach the Department's Regulatory Counsel attorney for bonding matters, and after consulting with him and other Department staff I have the following reply to the matter raised by Mr. Sheridan.

Conflict of 25 Pa. Code § 101.9 with 35 P.S. § 6018.505(a)

The bonds to which § 101.9 refers are, in the language of § 101.9(a), intended to "abate and prevent pollution of the waters of the Commonwealth". This regulation is of course promulgated under the Clean Streams Law, 35 P.S. §§ 691.1 et seq. The regulation is inconsistent with Section 505(a) of the Solid Waste Management Act, 35 P.S. § 6018.505(a) because, inter alia, 505(a) mandates a bond "for the land affected" to assure compliance not only with the Clean Streams Law, but also the Surface Mining Conservation and Reclamation Act, the Air Pollution Control Act, and the Dam Safety and Encroachments Act. As the Board is well aware, many non-water-quality factors go into closure of a site, including but not limited to:

- fire prevention
- vector control
- prevention of harmful storm water runoff
- maintenance of fill grade and integrity to prevent sloughing of sections of the fill off permitted bounds
- security and prevention of unauthorized site access
- dust control
- control of blowing litter
- avoidance of flood plain encroachments threatening neighbors; and
- conservation of topsoil.

ORIGINAL
(Red)

201026

Mr. Anthony J. Mazullo, Jr.
May 14, 1985

- 2 -

No doubt the Board can supply other examples from its experience.

The Department has ample authority under 505(a) to require posting of a bond for the full ten (10) years following closure to cover the matters listed above. Section 901 of the Solid Waste Act, 35 P.S. § 6018.901, calls for that Act to be interpreted liberally to effect its ends. The goal in the instant case is maintenance of financial leverage for the Department, the threat of exercise of which would be sufficient to deter Novak or Novak's potential successors in interest - from making a financial choice to abandon the site rather than close and maintain it properly. Novak, movants in these supersedeas proceedings, have failed to carry the burden of demonstrating that a bond of less than the full amount for less than the full ten-year term is sufficient to assure closure of the entire landfill.

Disturbing Facts Concerning Groundwater Sampling

In seeking a supersedeas, Novak bears the burden of demonstrating compliance with law and permit regulation. To violate a regulation is to violate the Solid Waste Act. 35 P.S. § 6018.610(9). 25 Pa. Code § 75.24(b)(4)(i) requires that sampling results from groundwater monitoring wells be submitted to the Department quarterly. The Department demonstrated through cross-examination of Walter Satterthwaite that that Novak failed to make the mandated monitoring submissions in 1984 [N.T. Dec. 27, 1984, pp. 140-149]. Now, in 1985, Novak has not yet submitted a full round of sampling for all available wells. Of the six wells on site, Novak during 1985 has submitted sampling results only for wells 5 and 6, and not results for all parameters required.

The Examiner will recall the Department's consternation over the scheduled split sampling Novak cancelled on the very morning it was to occur. Department staff conducted their own sampling on April 29, 1985 for those parameters for which laboratory time was available. New wells 1(a) and 2(a), which were intended to replace wells 1 and 2 but which Satterthwaite now deems unsatisfactory, shows the following non-natural-quality results:

Well 1(a)

Benzene	107 ppb (parts per billion)
Chlorobenzene	24 ppb

Well 2(a)

1,1 dichloroethane	1 ppb
1,2 dichloroethene	4.7 ppb
1,1,1 trichloroethene	17 ppb
PCE	1.1

The Department's field blanks showed none of the above substances detectable.

ORIGINAL
(req)

201027

COPY

Mr. Anthony J. Mazullo, Jr.
May 14, 1985

- 3 -

Mr. Pomponi advises me that last week copies of these sample results were mailed to Louis Novak and Walter Satterthwaite.

These are preliminary indications of groundwater contamination. Novak has not provided the Department with results for wells 3 and 4 for many months. The Board should bear in mind that it is in these circumstances it is contemplating issuance of a supersedeas to a party which has failed to carry its burden of demonstrating lack of environmental harm and which is not in compliance with the critical groundwater monitoring requirements. - Novak must not be permitted to benefit from its failure to monitor. The Department fears that lawfully required monitoring will reveal actual pollution aside from any allegedly caused by wells 1 and 2.

The Board should not alter the Department's Order.

Very truly yours,

151

KENNETH A. GELBURD
Assistant Counsel

cc: Michael J. Sheridan, Esquire
Bruce Beitler
John Dernbach, Esquire
William Calder, Esquire
Martin J. Karess, Esquire
HE 160

ORIGINAL
(Red)

201028

DONALD W. SNYDER, MEMBER
HOUSE POST OFFICE BOX 163
MAIN CAPITOL BUILDING
HARRISBURG, PA 17120
PHONE: (717) 787-4145

228 STATE AVENUE
EMMAUS, PA 18049
PHONE: (215) 965-2920



COMMITTEES

HEALTH AND WELFARE
LOCAL GOVERNMENT
MINES AND ENERGY MANAGEMENT
POLICY

DEF-RECEIVED
NORRISTOWN

MAY 17 1985

HOUSE OF REPRESENTATIVES

COMMONWEALTH OF PENNSYLVANIA

HARRISBURG

May 15, 1985

Sum/wrl
RD

Mr. Leon T. Gonshor
Department of Environmental Resources
1875 New Hope Street
Norristown, PA 19401

Dear Mr. Gonshor,

Just when I think I have the Department of Environmental Resources figured out, your employees always come up with a new one. It is my understanding that the results of tests conducted at the monitoring wells of the Novak landfill proved that pollutants were contained in the water's source. This would lead one to believe that a problem exists. However, it appears that the landfill operators are drilling new wells with the hope of finding a water source that is not polluted. What is the purpose of doing this?

Secondly, I have also learned that the Department is drafting a new closure order for the landfill which would have a deadline of September, 1986. This is being done in accordance with what appears to be the judge's decision in this matter. Is it true that Judge Mazullo cannot take into consideration the fact that the wells contain contaminated water in his decision because the Department failed to enter this into evidence prior to the hearing? It seems that the harder the Department tries, the better off Mr. Novak becomes. I am confused as to whom the Department is trying to protect since the more evidence you obtain to indicate that the danger to the public's health and safety exists, the longer the landfill seems to be able to operate. I would appreciate any information you can share with me in the status of the landfill operation because the information noted above is coming from the residents, and the residents are understandably becoming more angry, and due to the fact that I am closer to them than you are, guess who is getting the phone calls.

Thank you for your cooperation. I know it's not easy to answer these kinds of letters -- nor is it easy to write them.

Sincerely,

Don Snyder

Don Snyder
State Representative
134th Legislative District

ORIGINAL
(Reg)

DS/bjr

201029

Department of Environmental Resources

Landfill

Lehigh Co.

1375 New Hope Street
Morristown, PA 19401
215 270-1923

June 11, 1985

The Honorable Donald W. Snyder
House of Representatives
Commonwealth of Pennsylvania
228 State Avenue
Emmaus, PA 18049

Dear Representative Snyder:

This is in reply to your letter of May 15, 1985 regarding the Novak Landfill in South Whitenail Township, Lehigh County.

As part of the litigation, the geology consultant for the landfill testified that two of the monitoring wells were ~~improperly~~ constructed and the contamination in these wells was actually from the infiltration of surface water. The judge accepted this testimony and these wells were replaced. The wells were sited and installed with our approval and the initial sampling has just been received and shows essentially the same contamination as the original replaced wells. Copies of the results are enclosed for your information.

As I am sure you know the landfill has not operated since last October and the Department's position has not changed since we issued our order. The majority of the Department's evidence and witnesses testimony before the EIS centered on the existing groundwater contamination concerns. The hearing examiner has not scheduled any additional hearing dates and we are currently awaiting his decision.

If you have any additional questions in this matter, please feel free to contact me.

Very truly yours,

LEON T. GONSHOR
Regional Director

cc: Mr. Allen
Mr. Lynn ✓
Re 2/161.9

ENCLOSURES

201030



WALTER B. SATTERTHWAITE ASSOCIATES, INC.

11 N. FIVE POINTS ROAD
WEST CHESTER, PA 19380
(215) 692-5770

Walter B. Satterthwaite, P.G.
President
David F. Lakatos, P.E.
Principal

June 19, 1985

DER-RECEIVED
NORRISTOWN

Mr. James Dolan
Pennsylvania Department of
Environmental Resources
520 East Broad Street
Bethlehem, PA 18018

JUN 24 1985

RE: Novak Landfill
South Whitehall Township - Lehigh County

Mr. Dolan:

This letter is to inform you we will be re-sampling 2 of the new monitor wells at the Novak Landfill on Tuesday, June 25, 1985. The re-sampling of select wells is being scheduled since the purging may not have sufficiently cleaned the wells prior to sampling. This second analysis will also serve as an accuracy basis in respect to the preliminary laboratory reports of the May 23, 1985 split sampling. The available laboratory results from the May 23, 1985 sampling will be forwarded after the preliminary results have been verified.

Sincerely,

Richard T. Wroblewski
Project Geologist

RTW/dah

cc: Mr. Louis Novak, Sr.
Martin Karess, Esq.

ORIGINAL
(Red)

RECEIVED

JUN 21 1985

BETHLEHEM
DEPT. OF ENVIRONMENTAL
PROTECTION

201031



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

DER-RECEIVED
NORRISTOWN

AUG 30 1985

Bethlehem District Office
Bureau of Solid Waste Mgmt.
520 East Broad Street
Bethlehem, PA 18018
861-2070

August 28, 1985

RE: 100534

Novak Sanitary Landfill
South Whitehall Township
Lehigh County

Mr. Louis J. Novak
Novak Sanitary Landfill, Inc.
R. D. #1
Allentown, Pennsylvania 18104

Dear Mr. Novak:

NOTICE OF VIOLATION

Please be advised that you have failed to provide the Department with the results of the July 26, 1985, surface water analysis, as well as the subsequent groundwater samples taken by your consultant.

Therefore, it is requested that you supply this Department all the results of the July 26, 1985, samples as well as any other subsequent groundwater samples within three (3) days of the receipt of this notice.

This letter does not waive either expressly or by implication the power or authority of the Commonwealth of Pennsylvania to prosecute for any and all violations of law arising prior to or after the issuance of this letter, or the conditions upon which the letter is based. This letter shall not be construed so as to waive or impair any rights of the Department of Environmental Resources heretofore or hereafter existing.

This letter shall also not be construed as a final action of the Department of Environmental Resources.

If you have any questions concerning this matter, please feel free to contact me at the above number.

Very truly yours,

JOSEPH P. POMPONI
Field Operations Supervisor

JPP:mln

cc: Ken Gelburd, Esq.
: Walter B. Satterthwaite Assoc.

ORIGINAL
(Red)

201032

FOX, DIFFER, CALLAHAN, ULRICH & O'HARA

ANTHONY L. DIFFER
PAUL W. CALLAHAN
PARKE H. ULRICH
FRANCIS P. O'HARA
MICHAEL J. SHERIDAN
WILLIAM F. FOX, JR.
BRIAN McDEVITT
JOSEPH A. LASHINGER, JR.
STEVEN T. O'NEILL

ATTORNEYS AT LAW

317 SWEDE STREET

NORRISTOWN, PENNSYLVANIA 19401

(215) 279-9600

HENRY I. FOX
(1895-1948)
WILLIAM F. FOX
(1935-1978)

ROBERT W. HONEYMAN
RUSSELL E. ELLIS
OF COUNSEL

DER-RECEIVED
NORRISTOWN

September 24, 1985

SEP 27 1985

Environmental Hearing Board
221 North Second Street
Third Floor
Harrisburg, Pennsylvania 17101

Re: Novak Sanitary Landfill
Docket No. 84-425-M

Lehigh Co.

Gentlemen:

Enclosed herewith for filing is a Petition for Supersedeas with regard to the above matter which is currently pending before Judge Mazullo. We would appreciate it if the hearing on this Petition for Supersedeas could be scheduled as soon as possible.

Very truly yours,

Michael J. Sheridan
MICHAEL J. SHERIDAN

MJS:mb

cc: Bureau of Litigation
✓ Mr. Wayne L. Lynn
Department of Environmental Resources
Kenneth A. Gelburd
Department of Environmental Resources

ORIGINAL
in (Red)
file

201033

SEP 27 1985

ENVIRONMENTAL HEARING BOARD
Third Floor
221 North Second Street
Harrisburg, Pennsylvania 17101

LOUIS J. NOVAK, SR.,	:	DOCKET NO. 84-425-M
HILDA NOVAK,	:	
NOVAK SANITARY LANDFILL, INC.	:	
	:	
VS.	:	ATTORNEY I.D. #09301
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL RESOURCES:	:	
APPELLEE	:	

PETITION FOR SUPERSEDEAS

AND NOW comes the Appellants through their attorneys and respectfully petition for a supersedeas staying any continued enforcement of the below described Order as follows:

1. Appellants are Louis J. Novak, Sr., Hilda Novak and Novak Sanitary Landfill, Inc. The address of Appellants is R.D. 1, Box 268, Allentown, PA 18104.
2. On December 13, 1984, Wayne L. Lynn, Regional Solid Waste Manager of the Department of Environmental Resources issued an Order directed against Appellants. The Order was served on Appellants on December 14, 1984. A copy of the Order is attached hereto.
3. Thereafter, within the prescribed period, Appellants filed their appeal.
4. After issuance of the Order, a Petition for Supersedeas was filed in December of 1984. Appellants incorporate herein by reference ^{ORIGINAL (Red)} allegations set forth in the original Petition for Supersedeas as if they were set forth here at length, except to the extent that the timing of certain work or the timing of submission of certain plans must await final decision by the Board on the Appeal filed.

201034

5. Appellants believe and therefore aver that after extensive hearings, including several inspections of the site and the performance of survey work at the site, that Appellants established that they were entitled to a supersedeas under the standards set forth in 25 Pa. Code §21.78.

6. After conclusion of the hearings and after submission of briefs by the respective parties, the Department asserted at a conference before the Hearing Examiner and in correspondence to the Hearing Examiner, that the landfill was causing significant ground water pollution and that the supersedeas should not be granted under the provisions of 25 Pa. Code §21.78(h).

7. Additional testimony on the appeal was taken and testimony was concluded on the appeal during hearings held on September 4, and September 5, 1985.

8. Extensive testimony was offered by the Appellants concerning the Department's allegations of ground water pollution.

9. The testimony offered by Appellants established that ground water pollution does not exist in the ground water system underlying the landfill site as evidenced by the results from the monitoring wells.

10. The testimony further established that the conditions found at monitoring well 1B. represented a localized condition caused by gas infiltrating and accumulating in the well cavity, and that the localized condition was not adversely affecting the ground water system generally underlying the site as evidenced by the sample results from the remaining monitoring wells.

11. Even if it is assumed that the small quantities of water that accumulated in well 1B. are ground water, the testimony established that the localized condition found at well 1B. would be de minimis with respect to the ground water system beneath the site and would not constitute "significant pollution" of the ground

201035

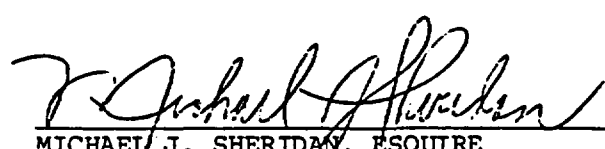
water system and does not present a "hazard to health or safety" within the meaning of 25 Pa. Code §21.78(b).

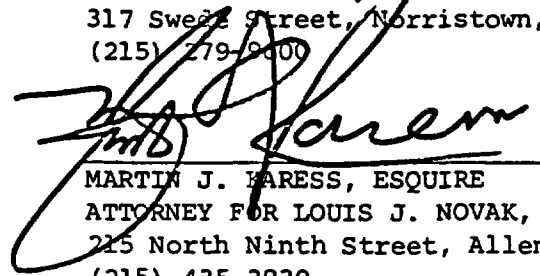
12. Appellants believe that the testimony introduced in the above Appeal establishes the following;

- A. That no injury to the public will result from the granting of the Supersedeas and, to the contrary, that environmental benefits would result from entry of the requested Supersedeas;
- B. That Appellants should prevail on the merits upon final adjudication of the Appeal.

13. If the Order is not superseded as requested, Appellants will sustain irreparable harm. The Order violates the existing rights of the Appellants to operate at the site. The premature closing of the site has led to significant financial damage to the business enterprise of the Appellants at the site and continuation thereof will lead to further financial ruin to their business. Continued closure of the site will prevent performance of necessary work at the site, will unreasonably delay the performance of other work at the site, and will prevent implementation of a closure plan with respect to appropriate areas of the site.

WHEREFORE, Appellants pray for entry of a Supersedeas staying further enforcement of the Order pending resolution of the Appeal of Appellants to the Board and for the scheduling of a prompt hearing if the Board believes that a further hearing is necessary or desirable in order to resolve this Petition for a Supersedeas.


MICHAEL J. SHERIDAN, ESQUIRE
ATTORNEY FOR NOVAK SANITARY LANDFILL, INC.
317 Sweet Street, Norristown, PA 19401
(215) 279-9400


MARTIN J. FARES, ESQUIRE
ATTORNEY FOR LOUIS J. NOVAK, SR. & HILDA NOVAK
215 North Ninth Street, Allentown, PA 18102
(215) 435-3830

201036

STATE OF PENNSYLVANIA:

COUNTY OF Lehigh SS.
~~MONTGOMERY~~ :

LOUIS J. NOVAK, SR., being duly sworn according to law, deposes and says that he is one of the Appellants named in the foregoing Petition for Supersedeas, that he is an officer of the Appellant Corporation, that he is authorized to take this affidavit on behalf of Appellants, and that the facts set forth in the foregoing Petition are true and correct to the best of his knowledge, or information and belief.

Sworn to and Subscribed

before me this 18th day

of Sept. 1985.

Louis J. Novak Sr.
LOUIS J. NOVAK, SR.

Bonnie L. Putchen
NOTARY PUBLIC

My Commission Exp: 9-26-88

ENVIRONMENTAL HEARING BOARD
Third Floor
221 North Second Street
Harrisburg, Pennsylvania 17101

LOUIS J. NOVAK, SR., : DOCKET NO. 84-425-M
HILDA NOVAK, :
NOVAK SANITARY LANDFILL, INC. :
VS. : ATTORNEY I.D. #09301
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL RESOURCES: APPELLEE :

CERTIFICATION OF SERVICE

I, MICHAEL J. SHERIDAN, one of the counsel for Appellants, hereby certify that a true and correct copy of the foregoing Petition for Supersedeas was served on the following in the following manner on September 24, 1985:

Environmental Hearing Board
221 North Second Street
Third Floor
Harrisburg, Pennsylvania 17101
Three Copies by Regular Mail

Bureau of Litigation
P.O. Box 2357
508 Executive House
101 South Second Street
Harrisburg, Pennsylvania 17120
One Copy by Regular Mail

Mr. Wayne L. Lynn
Regional Solid Waste Manager
Department of Environmental Resources
Norristown, Pennsylvania 19401
One Copy by Regular Mail

Kenneth A. Gelburd, Assistant Counsel
Department of Environmental Resources
1314 Chestnut Street, 12th Floor
Philadelphia, PA 19107
One Copy by Regular Mail

ORIGINAL
(Recd)

201038



OCT 7 1985

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
OFFICE OF CHIEF COUNSEL - EASTERN REGION
1314 CHESTNUT STREET - 12th FLOOR
PHILADELPHIA, PA 19107-4786

Telephone: (215) 875-7486



Novak Landfill

Lehigh Co.

October 3, 1985

The Honorable Anthony J. Mazullo, Jr.
Environmental Hearing Board
221 North Second Street
Third Floor
Harrisburg, PA 17101

RE: Novak v. DER
Docket No. 84-425-M

Dear Mr. Mazullo:

Enclosed please find the Commonwealth's Answer and Brief in Opposition to Petition for Supersedeas in the above matter. As of this date I have not yet received transcripts of the hearings on the merits held on September 4 and 5, 1985.

Thank you for your attention to this matter.

Sincerely yours,

Kenneth A. Gelburd

KENNETH A. GELBURD
Assistant Counsel

Enclosure

cc: (w/ Enclosure)
Martin J. Karess, Esquire
Michael Sheridan, Esquire
Mr. Bruce D. Beitler
2KAG 29.3

ORIGINAL
(Red)

AR201039

COMMONWEALTH OF PENNSYLVANIA
Before The
ENVIRONMENTAL HEARING BOARD

In the Matter of:

LOUIS NOVAK, et al

v.

PENNSYLVANIA DEPARTMENT OF
ENVIRONMENTAL RESOURCES

:
:
:
:
:
:

DOCKET NO. 84-425-M

MEMORANDUM OF COMMONWEALTH DEPARTMENT
OF ENVIRONMENTAL RESOURCES IN OPPOSITION
TO PETITION FOR SUPERSEDEAS

The Commonwealth Department of Environmental Resources (DER) responds as follows to the petition for supersedeas filed with the Environmental Hearing Board (the Board) on September 26, 1985 by appellants Louis J. Novak, Sr., Hilda Novak, and Novak Sanitary Landfill, Inc. (collectively, (Novak):

DER has already addressed at length the facts of this case and the law pertaining to Novak's heavy burden in requesting a supersedeas, both in its January 7, 1985 Brief in Opposition to Supersedeas and its January 22, 1985 Reply Brief on Bonding and Supersedeas. Rather than reiterate those discussions, DER attaches hereto copies of those Briefs and incorporates them by reference.

Novak Landfill is unfit to operate. There is ^{ORIGINAL} ~~no~~ approved closure plan; there is no bond. Site conditions argue (Red)


201040

against deposition of any waste: from overfilling to improper grading of the trenches, from unwarranted lack of in-place erosion controls to uncontrolled, unexplained explosive gas puffing out of monitoring well 1-b, from sinkhole formation in the vicinity of the southern sedimentation basin to continuing groundwater contamination in at least one well, Novak Landfill is out of control.

In its Order, DER recognized the fact that this site must be closed in an orderly, phased manner (see Paragraphs 2, 4, 5 and 6 of the Order). No further waste material should come into the landfill at all; but if it does, it should do so only in the context of a plan to close the site finally.

Novak's supersedeas petition should be denied, and DER so requests.

Respectfully submitted,


KENNETH A. GELBURD
Assistant Counsel
COMMONWEALTH OF PENNSYLVANIA
Department of Environmental Resources
Bureau of Litigation - Eastern Region
1314 Chestnut Street - 12th Floor
Philadelphia, Pennsylvania 19107-4786

Telephone: (215) 875-7486

DATE: October 3, 1985

2KAG 29

ORIGINAL
(Red)

201041

COMMONWEALTH OF PENNSYLVANIA
Before The
ENVIRONMENTAL HEARING BOARD

In the Matter of:

LOUIS NOVAK, et al

v.

PENNSYLVANIA DEPARTMENT OF
ENVIRONMENTAL RESOURCES

:
:
:
:
:
:

DOCKET NO. 84-425-M

ANSWER OF COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL RESOURCES TO
PETITION BY LOUIS J. NOVAK, SR., ET AL.
FOR SUPERSEDEAS

The Commonwealth Department of Environmental Resources (DER) hereby replies as follows to the September 24, 1985 petition for supersedeas filed by appellants Louis J. Novak, Sr., Hilda Novak, and Novak Sanitary Landfill, Inc. (collectively, Novak):

1. Admitted.

2. Admitted. By way of further answer, it is averred that DER's Order was directed not only against the named appellants, but also against Louis J. and Hilda Novak as husband and wife. The Board's attention is respectfully called to the end of the "NOW THEREFORE" clause on the bottom of Page Three of DER's Order.

ORIGINAL
(Red)

201042

3. This is a conclusion of law requiring no response. DER further admits that appellants appealed DER's Order to the Board.

4. Admitted, except that each and every one of the incorporated allegations of the December 1984 supersedeas petition is denied.

5. This is a conclusion of law to which no response is required. By way of further answer, DER denies that appellants have met the heavy burden which must be overcome before the Board can grant a supersedeas.

6. This is a conclusion of law which requires no response. By way of further answer, DER avers that all the evidence before the Board demonstrates that Novak Landfill -- whether by direct leachate discharge to groundwater underlying various portions of the site, as DER has demonstrated, or by any of the alternative mechanisms proffered by Novak with respect to the groundwater monitored by Wells 1, 1a, 1b, 2 and 2a -- is causing more than de minimis contamination of groundwater.

7. Admitted.

8. Admitted.

9. Denied that appellants' testimony established anything of the sort. To the contrary, appellants' testimony, combined with that of DER and with groundwater sampling results

ORIGINAL
(Red)

201043

in evidence, demonstrates contamination of groundwater by Novak Landfill. DER further denies that appellants' neologistic term, "the ground water system," is relevant to the issue before the Board, which is the fact noted in Paragraph J on Page Two of DER's Order, that Novak Landfill was and is "causing or threatening to cause pollution of groundwater."

10. Denied. The testimony was sheer speculation and did not establish anything. It is further denied that the alleged 'localization' of the groundwater contamination (whose existence is admitted by all parties) has any relevance to the issue of the source of that contamination. See answer to paragraph 9, supra.

11. This is a conclusion of law to which no response is required. By way of further answer, DER avers that all evidence before the Board demonstrates that Novak Landfill is polluting groundwater and that appellants Novak have not controlled that pollution; therefore, to the extent that any answer is required, the appellants' averments are denied.

12. This is a conclusion of law to which no response is required. By way of further answer, it is admitted that appellants believe that the testimony supports their claims; however, appellants' credibility and not their credulity is in question. It is specifically denied that the testimony in the above appeal demonstrates a lack of public injury or any entitlement by appellants to a supersedeas. By way of further

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(Red)

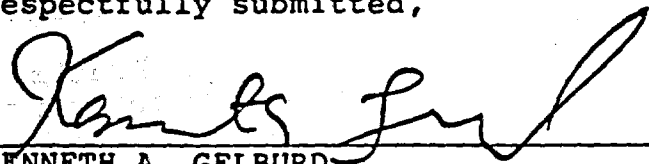
AB201044

answer, it is averred that the evidence before the Board in no way meets the Board's stringent criteria concerning supersedeas.

13. This is a conclusion of law requiring no response. By way of further answer, DER denies that irreparable harm to appellants has been shown; DER further denies that appellants have introduced any credible evidence concerning their financial condition, and that that condition is relevant to these proceedings; DER further denies that harm will result from keeping Novak Landfill closed. Indeed, DER avers that the only proper course to follow is to keep this overfilled, unbonded, out-of-compliance site closed.

WHEREFORE, DER respectfully requests that the Board issue an Order denying appellant's petition for a supersedeas of DER's Order.

Respectfully submitted,



KENNETH A. GELBURD
Assistant Counsel
COMMONWEALTH OF PENNSYLVANIA
Department of Environmental Resources
Bureau of Litigation - Eastern Region
1314 Chestnut Street - 12th Floor
Philadelphia, Pennsylvania 19107-4786

Telephone: (215) 875-7486

DATE: October 2, 1985

2KAG 29.2

201045

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
ENVIRONMENTAL HEARING BOARD

LOUIS J. NOVAK, SR., HILDA
NOVAK and NOVAK SANITARY
LANDFILL, INC.,

Appellants:

VS.

Docket No. 84-425-M

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL
RESOURCES,

Appellants :

VERIFICATION

WAYNE L. LYNN, subject to the penalties for unsworn falsification to authorities set forth in 18 Pa. C.S.A. §4904, does hereby aver that:

1. He is the Regional Solid Waste Manager of the Norristown Regional office of the Commonwealth Department of Environmental Resources (DER); and
2. He is authorized to make this Verification on behalf of DER; and
3. The DER Answer to Novak's Petition for Supersedeas fled with the Board on September 26, 1985 is true and correct to the best of his knowledge, information and belief.

10/2/85
Date

Wayne L. Lynn
Wayne L. Lynn
Regional Solid Waste Manager
Commonwealth Department of
Environmental Resources

ORIGINAL
(Red)

201046

COMMONWEALTH OF PENNSYLVANIA
Before The
ENVIRONMENTAL HEARING BOARD

In the Matter of:

LOUIS NOVAK, et al

vs.

PENNSYLVANIA DEPARTMENT OF
ENVIRONMENTAL RESOURCES

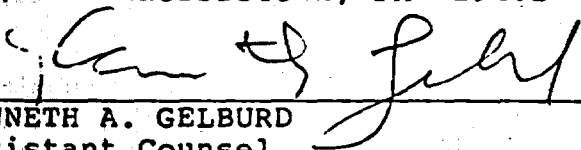
DOCKET NO. 84-425-M

CERTIFICATE OF SERVICE

The foregoing Answer and Brief in Opposition to Petition
for Supersedeas is being served by first class mail upon the
below listed counsel:

Martin J. Karess, Esquire
Karess & Reich
215 North Ninth Street
Allentown, PA 18102

Michael J. Sheridan, Esquire
Fox, Differ, Callahan, Ulrich
and O'Hara
317 Swede Street
Norristown, PA 19401


KENNETH A. GELBURD
Assistant Counsel
COMMONWEALTH OF PENNSYLVANIA
Department of Environmental Resources
Bureau of Litigation - Eastern Region
1314 Chestnut Street - 12th Floor
Philadelphia, Pennsylvania 19107-4786
Telephone: (215) 875-7486

DATE: October 3, 1985

2KAG 29.1

ORIGINAL
FILED

201047



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
OFFICE OF CHIEF COUNSEL - EASTERN REGION
1314 CHESTNUT STREET - 12th FLOOR
PHILADELPHIA, PA 19107-4786

Telephone: (215) 875-7486



October 15, 1985

Anthony J. Mazullo, Jr., Member
Environmental Hearing Board
221 North Second Street
Third Floor
Harrisburg, PA 17101

RE: Novak et al. v. DER
Docket No. 84-425-M

Dear Mr. Mazullo:

As you recall, we had spoken about submission of the Commonwealth's brief on the merits in the above appeal twenty days after the final transcript (September 5, 1985) arrived. That transcript has just come in today, and I have a supersedeas matter scheduled before the Board calculated to absorb at least four hearing days and considerable preparation and briefing time -- all this within "prime time" for work on the Novak brief. I hereby formally request a short extension of time from November 4, 1985 to November 14, 1985 for submission of the post hearing brief on the merits.

I have reviewed the transcript excerpts submitted by Novak from the appeal SmithKline Beckman Corp. v. DER et al., No. 85-310-M. Of course, Louise Thompson represented the Commonwealth in that supersedeas hearing, and she advises me that the following distinctions exist between the circumstances in that case and this. First, groundwater monitoring revealed no volatile organic contaminants in SmithKline; they abound in the Novak samples. Second, in SmithKline, there was no allegation of possible drinking water supply contamination; the Cramer well sample results in the instant case show some contamination. Third, SmithKline claimed that existing violations at the Montgomery County Landfill placed on the Commonwealth a mandatory duty to preclude acceptance of further waste. The Commonwealth's opposition to this assertion in no way impairs its right to exercise discretion to close down a site, particularly where, as here, the Department had been attempting less stringent means for over two years to bring the site into compliance. The Department not only handed inspection reports to Mr. Novak, it met with him and his engineer on site to show them in the field what the problems were. Only after the Department tried "to work out problems so that the . . . waste disposal facility could operate within the law and solve the problems . . .", only after those attempts proved fruitless and off-permit trench excavation began, did the Department issue the Order shutting down Novak Landfill.

AR201048

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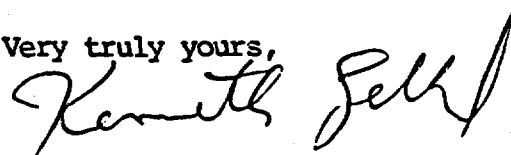
Anthony J. Mazullo, Jr., Member
October 15, 1985

- 2 -

The Board's attention is respectfully directed to 25 Pa. Code § 75.23(a)(1), respecting general requirements for solid waste facilities. That section mandates submission of an explanation of "the proposed ultimate disposition of the site" That section provides regulatory precedent, were such needed in the face of the overwhelming testimony and stipulation by Novak's counsel concerning the need for a final closure plan for this site (Notes of Testimony, Vol. V, January 2, 1985, p. 540).

The Commonwealth looks forward to a favorable ruling on the supersedeas petition.

Very truly yours,



KENNETH A. GELBURD
Assistant Counsel

cc: Louise S. Thompson, Esquire
Mr. Bruce D. Beitler
Mr. Wayne L. Lynn
Michael J. Sheridan, Esquire
Martin J. Karess, Esquire
LHE 319

Unrecorded
(Heo)

201049



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

Bethlehem Office
520 East Broad Street
Bethlehem, PA 18018
861-2070

October 24, 1985

Re: Landfill Inspection
October 23, 1985

Mr. Louis J. Novak
R.D. #1
Allentown, PA 18104

Dear Lou:

Attached is your copy of the referenced inspection form.
If you have any questions, please give me a call.

Very truly yours,

James A. Dolan
Solid Waste Specialist

JAD/bal

Enclosure

CC: B. Beitler
Division of Facilities Management

ORIGINAL
(Red)

201050

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

10/28
8

INSPECTION REPORT

Site ID # <u>100534</u>	License # _____
Site Name: <u>NOVAK SANITARY LANDFILL</u>	Phone # <u>(215) 395-6251</u>
Address: <u>R.D. #1</u>	
City: <u>ALLEN TOWN</u>	State: <u>PA</u> Zip Code: <u>18104</u>
Municipality: <u>SOUTH WHITE HALL TWP</u>	County: <u>LEHIGH</u>
Responsible Official: <u>LOUIS J. NOVAK</u>	Title: <u>OWNER</u>
Person Interviewed: <u>SAME</u>	Title: <u>SAME</u>
Inspector: <u>JAMES A. DOLAN</u>	

Inspection Type

- 01 Routine
04 Follow Up
05 Crit Stage
06 Sample Only
07 Permitting
08 Superfund
09 Ground Water
10 Survey

- 11 Part B
12 Complaint
13 Withdrawn
14 Closure
15 Post Closure
50 Record Rev
99 Other

(Generator Only)

- 51 Routine
54 Follow Up
56 Sample
60 Survey
62 Complaint
70 Record Rev
98 Other

- Hazardous ☐
Residual ☐
Municipal ☒

- Treatment ☐
Storage ☐
Disposal ☒
Generator ☐
Processing ☐
Surface App ☐
Transporter ☐

Site ID # <u>101015T314</u>	On-Site Start Time <u>1030</u>				
	On-Site End Time <u>1230</u>				
	On-Site Total Time <u>2.0</u>				
Due Date <u>1/02/85</u>	Inspection Date <u>1/02/85</u>	Type <u>C4</u>	Inspector ID # <u>21130</u>	# Violation <u>00</u>	Enforcement <u>00</u>
Comment _____					
Sample # Low _____	Sample # High _____				
Monitoring Points Sampled					
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

AR201051

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES,
DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10

IDENTIFICATION NUMBER (1-7) 100534	INSPECTION DATE (9-14) 10-23-85	INSPECTORS SOC. SEC. NO. (18-24) 182 34 6003
NAME OF DISPOSAL FACILITY NOVAK SANITARY LANDFILL	FACILITY ADDRESS R.D. #1 ALLENTOWN PA 18104	
MUNICIPALITY SOUTH WHITEHALL TWP	COUNTY LEHIGH	
FACILITY PROPRIETOR (NAME, ADDRESS, AND TELEPHONE NUMBER) LOUIS J. NOVAK R.D. #1 ALLENTOWN 215 395-6251		
DAILY VOLUME RECEIVED 0	ANNUAL REPORT RECEIVED N/A	DAYS PER WEEK OPERATED 0

1 - Compliance, 2 - Non-Compliance, 3 - Not applicable

CHAPTER CITATION		1	2	3
26 75.21(m)(3)	Suitable barrier blocks access to site when attendant is not present.	X		
27 75.21(s)	25' setback line buffer zone present	X		
28 75.21(l)(1), (2), (3)	Adequate fire equipment or procedure for minimizing fire hazard	X		
29 75.21(q)	Approved operational safety program being utilized			
30 75.21(p)	Effective vector control program utilized at site where needed. Circle vector program required: bird, mosquito, rodent, fly	X		
31 75.21(m)(2)	Hours of operation prominently posted			X
32 75.21(k)	Telephone or other communications available			X
33 75.21(o)(1)	Salvaging occurs in accordance with regulations			X
34 75.21(r)(1), (2), (3), (4), 75.24(e)(2)(vii)(viii)	Operational records maintained and method of measurement provided			X
35 75.24(c)(2)(xxi), 75.37(j) & 75.38 II(8)(viii)	Final minimum uniform two foot layer of compacted cover material placed on surface of final lift			X
36 75.24(c)(2)(ii), 75.37(e) & 75.38 II(8)(viii)	Surface water management administered at the site			X
37 75.24(c)(2)(ii), (iii), & 75.37(d)(1), (2)	Final slopes within 1 to 15 percent or as approved by Department			X
38 75.24(c)(2)(xi) & 75.38 II(8)(viii)	Adequate source and type of cover material being utilized			X
39 75.24(c)(2)(v) & 75.38 II(8)(ii)(iv)(vi)	Site access roads are negotiable by loaded collection vehicles			X
40 75.24(c)(2)(ii)(iii), 75.37(d)(1)(2) & 75.38 II(8)(viii)	Slopes, benching and terracing in accord with regulations			X
41 75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(ii)	Fire breaks			X

201052

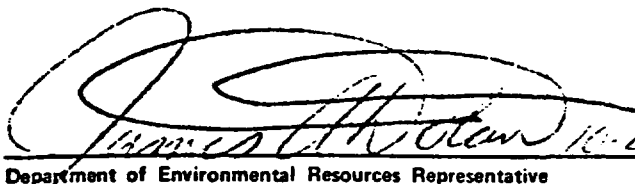
**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT**

**INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES,
DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10**

1 - Compliance, 2 - Non-Compliance, 3 - Not applicable

CHAPTER CITATION		1	2	3
42	75.24(c)(2)(xxiv), 75.37(k) & 75.38 II(6)	Gas management	X	
43	75.24(b)(4)(i), 75.37(k)(6) & 75.38 II(8)(i)	Ground water monitoring requirements being met	X	
44	75.24(c)(2)(xi), 75.37(k) & 75.38 II(8)(ii)	Approved cover material being utilized		X
45	75.24(c)(2)(x)	Approved subbase being utilized		X
46	75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(iv)	Proper barriers being maintained		X
47	75.25(h)	Lined site, under drains operable		X
48	75.25(i)	Are liners in place and covered with protective earth		X
49	75.25(o)(3)	Lined site, daily record of leachate flow maintained		X
50	75.26(a) & 75.37(g)	Leachate treatment facilities being operated properly		X
51	75.26(o), 75.37(g), 75.38 II(8)(viii)	Erosion controlled on site, diversion ditches as required		X
52	75.26(b), 75.37(k)(2), (3), 75.38 II(8)(ii)	Solid waste spread and compacted in layers not exceeding two feet deep		X
53	75.26(q)	At lined sites, is all waste deposited on lined areas		X
54	75.26(f)	Regulation ban on open burning adhered to		X
55	75.26(d) & 75.38 II(8)(vi)	Bulky waste properly controlled		X
56	75.26(i) & 75.38 II(8)(vii)	Uniform minimum six inch layer of compacted material placed on all exposed solid waste at the end of each working day		X
57	75.26(s)	Hazardous wastes & sludges stored and/or disposed with written Departmental approval		X
58	75.26(n)	Intermediate uniform minimum one-foot layer of compacted cover material placed on completed lifts		X
59	75.26(d) & 75.38 II(8)(iv)	Unloading area restricted to proximity of the working face		X
60	75.26(i)	Working face area confined to size suitable for daily cover/compaction		X
61	75.26(q), 75.37(k), (s) & 75.38 II(8)(x)	Operation in accordance with approved plans		X
62	75.26(g), (h) & 75.38 II(8)(vi)	Dust controlled at site		X
63	75.26(j), (k)	Blowing litter controlled		X
64	75.26(c)	Provision for standby equipment available when needed		X
65	75.26(o), (p), 75.37(j), 75.38 II(8)(ix)	Has vegetative growth been established to prevent soil erosion on disturbed areas		X
66	Chapter 101(9)(e)(2)	Is bonding status correct		X

201053

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENTINSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES
DEMOLITION SITES, FLYASH SITES, SLAG SITESCOMMENTS:
FORM NO. 10, 11, & 12DISPOSAL FACILITY NOVAK LANDFILL100534DATE 10-23-85SITE ~~NOT~~ PRESENTLY IN OPERATION.MAIN ENTRANCE ROAD UP TO & INCLUDING RECYCLING
BUILDING HAS BEEN PAVEDLARGE ITEMS HAVE BEEN REMOVED & SITE COVERED UP
VEGETATIVE COVER HAS BEEN ESTABLISHED ON ABOUT
80% OF SITE.SEVERAL PILE LEACHATE PANS ARE BEING MAINTAINED
ON THE SOUTH SIDE OF THE SITE. WHEN THESE
PANS OCCUR, FINAL GRADING OF SITE FOLLOWING
CLOSURE SHOULD ELIMINATE THISMODERATE TO SEVERE EROSION ON UNGRADED
SURFACES. A DECISION ON THE FUTURE OF THIS
SITE IS DESPERATELY NEEDEDTRANSFER/RECYCLING STATION IS NOT OPERATINGORIGINAL
(Red)
James H. Nolan 10-24-85
Department of Environmental Resources RepresentativeMAILED
Operator

201054



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
OFFICE OF CHIEF COUNSEL - EASTERN REGION
1314 CHESTNUT STREET - 12th FLOOR
PHILADELPHIA, PA 19107-4786



Telephone: (215) 875-7486

November 13, 1985

The Honorable Anthony J. Mazullo, Jr.
Environmental Hearing Board
221 North Second Street
Third Floor
Harrisburg, PA 17101

RE: Novak v. DER
Docket No. 84-425-M

Dear Mr. Mazullo:

Enclosed please find the Commonwealth's Post-Hearing Memorandum in the above matter.

Thank you for your attention to this matter.

Sincerely yours,

KENNETH A. GELBURD
Assistant Counsel

Enclosure

cc: (w/ Enclosure)
Martin J. Karess, Esquire
Michael Sheridan, Esquire
Mr. Bruce D. Beitler
2KAG 34L

ORIGINAL
(Red)

201055

11-13-85

COMMONWEALTH OF PENNSYLVANIA
Before The
ENVIRONMENTAL HEARING BOARD

In the Matter of:

LOUIS J. NOVAK, et al

v.

PENNSYLVANIA DEPARTMENT OF
ENVIRONMENTAL RESOURCES

:
:
: DOCKET NO. 84-425-M
:
:

POST-HEARING MEMORANDUM OF COMMONWEALTH
DEPARTMENT OF ENVIRONMENTAL RESOURCES

ORIGINAL
(Red)

KENNETH A. GELBURD
Assistant Counsel
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
Office of Chief Counsel - Eastern Region
1314 Chestnut Street - 12th Floor
Philadelphia,, Pennsylvania 19107
Telephone: (215) 875-7486

201056

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES,
DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10

IDENTIFICATION NUMBER (1-7) 100534	INSPECTION DATE (9-14) 3-18-86	INSPECTORS SOC. SEC. NO. (16-24) 182-34-6003
NAME OF DISPOSAL FACILITY NOVAK SANITARY LANDFILL	FACILITY ADDRESS R.D.#1 ALLEN TOWN 18104	
MUNICIPALITY S. WHITEHALL TWP	COUNTY LEHIGH	
FACILITY PROPRIETOR (NAME, ADDRESS, AND TELEPHONE NUMBER) LOUIS J. NOVAK R.D.#1 ALLENTOWN 715 395-1251		
DAILY VOLUME RECEIVED 0	ANNUAL REPORT RECEIVED N/A	DAYS PER WEEK OPERATED C

1 - Compliance, 2 - Non-Compliance, 3 - Not applicable

CHAPTER CITATION		1	2	3
26 75.21(m)(3)	Suitable barrier blocks access to site when attendant is not present.	X		
27 75.21(s)	25' setback line buffer zone present.	X		
28 75.21(i)(1), (2), (3)	Adequate fire equipment or procedure for minimizing fire hazard	X		
75.21(q)	Approved operational safety program being utilized			
75.21(p)	Effective vector control program utilized at site where needed. Circle vector program required: bird, mosquito, rodent, fly			X
30 75.21(m)(2)	Hours of operation prominently posted			X
31 75.21(k)	Telephone or other communications available			X
32 75.21(o)(1)	Salvaging occurs in accordance with regulations			X
33 75.21(r)(1), (2), (3), (4), 75.24(e)(2)(vii)(viii)	Operational records maintained and method of measurement provided			X
34 75.24(c)(2)(xxi), 75.37(j) & 75.38 II(8)(viii)	Final minimum uniform two foot layer of compacted cover material placed on surface of final lift			X
35 75.24(c)(2)(ii), 75.37(e) & 75.38 II(8)(viii)	Surface water management administered at the site		X	
36 75.24(c)(2)(iii), (iii), & 75.37(d)(1), (2)	Final slopes within 1 to 15 percent or as approved by Department			X
37 75.24(c)(2)(xi) & 75.38 II(8)(viii)	Adequate source and type of cover material being utilized			X
38 75.24(c)(2)(v) & 75.38 II(8)(iii)(iv)(vi)	Site access roads are negotiable by loaded collection vehicles			X
39 75.24(c)(2)(ii)(iii), 75.37(d)(1)(2) & 75.38 II(8)(viii)	Slopes, benching and terracing in accord with regulations			X
40 75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(iii)	Fire breaks			X
41				

ORIGINAL
(Red)

201057



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

Bethlehem District Office
Bureau of Waste Management
520 East Broad Street
Bethlehem, PA 18018
861-2070

March 18, 1986

RE: Sanitary Landfill Inspection
#100534, Lehigh County
March 18, 1986

Mr. Louis J. Novak
Novak Sanitary Landfill
R. D. #1
Allentown, Pennsylvania 18104

Dear Mr. Novak:

NOTICE OF VIOLATION

As a result of the referenced inspection, the following violation of the Pennsylvania Solid Waste Rules and Regulations was discovered:

Item 36 - Surface water management administered at site.

You are hereby notified of both the existence of this violation as well as the need to provide for its prompt correction. Toward this end, you are to submit to the Department, in writing, within fourteen (14) days a proposed program and schedule for abatement of these violations. The Department's inspection report contains time periods of completion of remedial actions. These reports are either enclosed or have been previously supplied to you. If your proposed abatement program indicates certain corrections cannot be completed within these time periods, you are requested to supply justification for any extensions.

This letter does not waive, either expressly or by implication, the power or authority of the Commonwealth of Pennsylvania to prosecute for any and all violations of law arising prior to or after the issuance of this letter or the conditions upon which the letter is based. This letter shall not be construed so as to waive or impair any rights of the Department of Environmental Resources, heretofore or hereafter existing.

This letter shall also not be construed as a final action of the Department of Environmental Resources.

If you have any questions concerning this matter, please feel free to contact me.

Very truly yours, ^{ORIGINAL} (Red)

cc: B. Beitler
: G. Bonner
: Div. of Compliance & Enforcement

JAMES A. DOLAN
Waste Management Specialist

AR201058

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT**

**INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES,
DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10**

1 - Compliance, 2 - Non-Compliance, 3 - Not applicable

CHAPTER CITATION		1	2	3
42 75.24(c)(2)(xxiv), 75.37(k) & 75.38 II(6)	Gas management	X		
43 75.24(b)(4)(i), 75.37(k)(6), & 75.38 II(8)(i)	Ground water monitoring requirements being met	X		
44 75.24(c)(2)(xi), 75.37(k) & 75.38 II(8)(ii)	Approved cover material being utilized			X
45 75.24(c)(2)(x)	Approved subbase being utilized			X
46 75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(iv)	Proper barriers being maintained			X
47 75.25(h)	Lined site, under drains operable			X
48 75.25(i)	Are liners in place and covered with protective earth			X
49 75.25(o)(3)	Lined site, daily record of leachate flow maintained			X
50 75.26(a) & 75.37(g)	Leachate treatment facilities being operated properly			X
51 75.26(o), 75.37(g), 75.38 II(8)(viii)	Erosion controlled on site, diversion ditches as required	X		
52 75.26(b), 75.37(k)(2), (3), 75.38 II(8)(ii)	Solid waste spread and compacted in layers not exceeding two feet deep			X
53 75.26(q)	At lined sites, is all waste deposited on lined areas			X
54 75.26(f)	Regulation ban on open burning adhered to	X		
55 75.26(d) & 75.38 II(8)(vi)	Bulky waste properly controlled			X
56 75.26(l) & 75.38 II(8)(vii)	Uniform minimum six inch layer of compacted material placed on all exposed solid waste at the end of each working day			X
57 75.26(s)	Hazardous wastes & sludges stored and/or disposed with written Departmental approval			X
58 75.26(n)	Intermediate uniform minimum one-foot layer of compacted cover material placed on completed lifts			X
59 75.26(d) & 75.38 II(8)(iv)	Unloading area restricted to proximity of the working face			X
60 75.26(i)	Working face area confined to size suitable for daily cover/compaction			X
61 75.26(q), 75.37(k), (s) & 75.38 II(8)(x)	Operation in accordance with approved plans			X
62 75.26(g), (h) & 75.38 II(8)(vi)	Dust controlled at site	X		
63 75.26(j), (k)	Blowing litter controlled	X		
64 75.26(c)	Provision for standby equipment available when needed	X		
75.26(o), (p), 75.37(j), 75.38 II(8)(ix)	Has vegetative growth been established to prevent soil erosion on disturbed areas			X
Chapter 101(9)(e)(2)	Is bonding status correct			X

ORIGINAL
(Red)

201059

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENTINSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES
DEMOLITION SITES, FLYASH SITES, SLAG SITESCOMMENTS:
FORM NO. 10, 11, & 12

DISPOSAL FACILITY

100534

KONAK SANITARY LANDFILL

DATE

3-18-86

SITE REMAINS CLOSED.

CONDITION OF SITE REMAINS BASICALLY UNCHANGED

SOME GRADING HAS BEEN DONE TO PREVENT OR BUILD UP
LOW SPOTS.

SURFACE WATER PONDING IN SOUTHWEST CORNER OF
TRENCH 4 REMAINS A MAJOR PROBLEM. THIS, COUPLED
WITH RECENT HEAVY RAINS HAS CAUSED TWO (2) MODERATE
LEACHATE BREAKOUTS ON SURFACE OF TRENCH 4. PRODUCING
FLOWS OF ABOUT 2-5 GALS/MIN. LEACHATE IS BEING
CONTAINED ONSITE. BREAKOUTS WERE PLUGGED DURING
INSPECTION, BUT THIS SW CORNER MUST BE FILLED
IN SO PRECIPITATION WILL RUNOFF & NOT PRODUCE
LEACHATE.

CITATIONS:

ITEM 36 - SURFACE WATER MGMT

ORIGINAL
(Red)

MAILED

Department of Environmental Resources Representative

Operator



M/R
SE

COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD
221 NORTH SECOND STREET
THIRD FLOOR
HARRISBURG, PENNSYLVANIA 17101
(717) 787-3483

MAXINE WOELFLING, CHAIRMAN
EDWARD GERJUOY, MEMBER

March 24, 1986

M. DIANE SMITH
SECRETARY TO THE BOARD

Debra and Nicholas Pidstawski
R. D. 1, Box 242B River Road
Allentown, PA 18104

Dear Mr. & Mrs. Pidstawski:

Your correspondence dated March 17, 1986, concerning Novak Sanitary Landfill, Inc. v. DER, EHB Docket No. 84-425-W, is being returned to you because it is an improper ex parte communication. The Board has neither reviewed it nor placed a copy of it in the file because the Board cannot consider any matter not on the record in this proceeding.

While the Board believes that you are not attempting to influence its decision and that you are only trying to bring what you may believe to be relevant evidence to its attention, it must warn you about this conduct. Because you are not an attorney, you may not understand that proceedings must be conducted in a certain fashion in order to safeguard the rights of all parties. If the Board were to accept and review correspondence of the nature you sent, the rights of the appellant would be prejudiced because it would have no opportunity to rebut the information.

The Board strongly discourages you from any further correspondence of this nature. If we receive any more, it will be returned to you without opening and without explanation or it will be destroyed immediately upon receipt.

Sincerely yours,

ENVIRONMENTAL HEARING BOARD

Maxine Woelfling
Maxine Woelfling, Chairman

cc: Bureau of Litigation
For the Commonwealth, DER:
Kenneth A. Gelburd, Esq. ✓
Eastern Region
For Appellant:
Michael J. Sheridan, Esq.
Norristown, PA

and Martin Karess, Esq. *ORIGINAL*
Allentown, PA

201061



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD
221 NORTH SECOND STREET
THIRD FLOOR
HARRISBURG, PENNSYLVANIA 17101
(717) 787-3483

MAXINE WOELFLING, CHAIRMAN
ANTHONY J. MAZULLO, JR., MEMBER
EDWARD GERJUOY, MEMBER

March 24, 1986

M. DIANE SMITH
SECRETARY TO THE BOARD

Mrs. Helen Pidstawski
Route 1, Box 242
Allentown, PA 18104

Dear Mrs. Pidstawski:

Your correspondence dated March 16, 1986, concerning Novak Sanitary Landfill, Inc. v. DER, EHB Docket No. 84-425-W, is being returned to you because it is an improper ex parte communication. The Board has neither reviewed it nor placed a copy of it in the file because the Board cannot consider any matter not on the record in this proceeding.

While the Board believes that you are not attempting to influence its decision and that you are only trying to bring what you may believe to be relevant evidence to its attention, it must warn you about this conduct. Because you are not an attorney, you may not understand that proceedings must be conducted in a certain fashion in order to safeguard the rights of all parties. If the Board were to accept and review correspondence of the nature you sent, the rights of the appellant would be prejudiced because it would have no opportunity to rebut the information.

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Sincerely yours,

ENVIRONMENTAL HEARING BOARD

Maxine Woelfling

Maxine Woelfling, Chairman

cc: Bureau of Litigation
For the Commonwealth, DER:
Kenneth A. Gelburd, Esq. ✓
Eastern Region
For Appellant:
Michael J. Sheridan, Esq.
Norristown, PA

and

Martin Karess, Esq.
Allentown, PA

ORIGINAL
(Red)

201062

DER-RECEIVED
NORRISTOWN

MAR 31 1986



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD
221 NORTH SECOND STREET
THIRD FLOOR
HARRISBURG, PENNSYLVANIA 17101
(717) 787-3483
March 24, 1986

MAXINE WOELFLING, CHAIRMAN
EDWARD GERJUOY, MEMBER

M. DIANE SMITH
SECRETARY TO THE BOARD

Mr. Charles F. Hock
Route 1, Box 247
Allentown, PA 18104

Dear Mr. Hock:

Your correspondence dated March 15, 1986, concerning Novak Sanitary Landfill, Inc. v. DER, EHB Docket No. 84-425-W, is being returned to you because it is an improper ex parte communication. The Board has neither reviewed it nor placed a copy of it in the file because the Board cannot consider any matter not on the record in this proceeding.

While the Board believes that you are not attempting to influence its decision and that you are only trying to bring what you may believe to be relevant evidence to its attention, it must warn you about this conduct. Because you are not an attorney, you may not understand that proceedings must be conducted in a certain fashion in order to safeguard the rights of all parties. If the Board were to accept and review correspondence of the nature you sent, the rights of the appellant would be prejudiced because it would have no opportunity to rebut the information.

The Board strongly discourages you from any further correspondence of this nature. If we receive any more, it will be returned to you without opening and without explanation or it will be destroyed immediately upon receipt.

Sincerely yours,

ENVIRONMENTAL HEARING BOARD

Maxine Woelfling
Maxine Woelfling, Chairman

cc: Bureau of Litigation
For the Commonwealth, DER: ✓
Kenneth A. Gelburd, Esq.
Eastern Region
For Appellant:
Michael J. Sheridan, Esq.
Norristown, PA

and Martin Karess, Esq.
Allentown, PA

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Novak Landfill
N/R
Lehigh

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
ENVIRONMENTAL HEARING BOARD

F/c: Novak Landfill
Lohr Co.

LOUIS J. NOVAK, SR., HILDA NOVAK :
AND NOVAK SANITARY LANDFILL, INC. :
Appellant :
VS : DOCKET NO. 84-425-M
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF ENVIRONMENTAL :
RESOURCES :
Defendant :

Verbatim Report of ARGUMENT
held at 221 N. 2nd Street
HARRISBURG, PENNSYLVANIA on Tuesday

March 25, 1986
10:45 a.m.

BEFORE: MAXINE WOELFLING, Esquire
Chairman

APPEARANCES:

KARESS & REICH
BY: MARTIN J. KARESS, Esquire KENNETH A. GELBURD, Esquire
215 North Ninth Street Assistant Counsel
Allentown, Pennsylvania 18102 Office of Chief Counsel
Eastern Region
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(For Appellants)

CAPITAL CITY REPORTING SERVICE
BOX 11908 FEDERAL SQUARE STATION
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2 THE EXAMINER: Are we ready to go on the
3 record?

4 Good morning, counsel, this is an oral
5 argument on a petition for supersedeas in Docket No.
6 84-425-M. My name is Maxine Woefling, Chairman of the
7 Environmental Hearing Board, the Hearing Board member to
8 whom this case is now assigned for primary handling.

9 I would note that this is the third petition
10 for supersedeas filed in this case and that the Board has
11 not issued rulings on the other two petitions for
12 supersedeas.

13 As with the other two petitions for
14 supersedeas, the appellant has the burden to show that he
15 is entitled to a supersedeas and with that in mind we will
16 begin our oral argument.

17 Mr. Sheridan.

18 MR. SHERIDAN: If Your Honor please, I filed
19 the petition for supersedeas and this in a matter, as you
20 are aware from the record, the overall case has been
21 pending since December, if I got my years right, 1984, at
22 which time there was a petition for supersedeas filed and
23 on which there were hearings but no ruling.

24 Then in September, roughly September or
25 October of this year, we had filed another petition for

1
2 THE EXAMINER: I will.

3 MR. SHERIDAN: The site is divided into four
4 sections, so to speak. There is an old mine reclamation
5 section which was substantially completed by 1972. Then
6 there is a nest located in the northern portion of the
7 site.

8 If you can visualize the site it slopes from
9 north to site, so up at the top of the site is the old mine
10 reclamation area.

11 Then there is a section called an area fill
12 which section of the site which surrounds, so to speak, the
13 old mine area, and is itself located in the northern
14 section of the site.

15 The area fill portion of the site was worked
16 during the period from approximately 1972 -- and I think
17 was fully completed by 1982.

18 In addition, in the northeast corner.

19 THE EXAMINER: I am familiar with the
20 layout of the site and the demolition waste area and the
21 trench area and the old mine area, if that helps.

22 MR. SHERIDAN: That does help.

23 To make one point in that area, the
24 demolition fill portion of the site is not yet completed.
25 There are large areas of that which are not yet filled.

1
2 when the area fill portion of the site was completed, at
3 the point where it abutted the trench fill portion of the
4 site, there was a difference in grade. In order to
5 accomplish one of the most important aspects of proper
6 landfilling, that is, shedding of water and in order to do
7 that proper grade and slope, it was necessary to amend the
8 plans in 1982 to provide that the refuse in the trenches
9 would be filled above grade and the berms separating the
10 trenches would also be filled above grade to give a proper
11 slope and a proper slope relationship between the area fill
12 and the trench fill so that you would have a grade that
13 would enable the water to be shed from the site.

14 That was done in 1982.

15 The size and the shape of the trenches on the
16 1982 plan were different than the size and shape of the
17 trenches in the 1972 plans.

18 I would point out that in the 1972 and 1982
19 plans you had perfect -- I think we learned in grade school
20 -- I think they were parallelograms and they were perfectly
21 shaped I guess in cookie cutter pattern. The trenches that
22 were actually constructed were not cookie cutter
23 parallelograms, the shape varied with practicalities that
24 you encounter on the site. They were not nice and neat and
25 exact parallelograms as shown on the plans.

1
2 The testimony in the record I think is clear
3 that constructing the greater separation between the
4 trenches -- and I say greater than the minimum of eight
5 feet -- there was no maximum specified in the DER letter,
6 just a minimum.

7 So that creating a separation between the
8 trenches greater than the eight feet I think the testimony
9 is clear that it is either an environmental benefit, and I
10 might add, that is my common sense opinion, or it is
11 environmentally neutral.

12 We have some testimony from our people that
13 indicates it is a benefit, I think all the testimony
14 indicates there is no environmental degradation that would
15 result from having the separation being 20 rather than 8.

16 I mentioned before that the shape of the
17 trenches as they were dug out did form perfect
18 parallelograms, there are items in the documents in the
19 record that show the actual shapes of the trenches.

20 I would point out and I think it is important
21 for Your Honor to understand that the actual surface area,
22 of the four trenches that are as built on the site and the
23 surface area of proposed trench five as staked out now on
24 the site, which is partially excavated, that surface area
25 is less than the surface area of the five trenches that

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1 chocolate and vanilla plan graphically shows that and there
2 are other pages or exhibits to that plan that show it was
3 part of the 1982 plan that the level of the trenches would
4 be raised above grade. The berm would be raised above
5 grade, the purpose being to achieve one of the most
6 important aspects and that is proper shedding or drainage
7 of water off the trench fill area.
8

9 During the hearing the engineers from the
10 Satterthwaite office went out to the site and did field
11 measurements of the site. There are exhibits that they
12 introduced and charts that they introduced and also oral
13 testimony from Mr. Satterthwaite that indicates -- I
14 believe as I read the record -- that the grade and slope of
15 the trench fill area of the site does, in fact, conform and
16 comply with the grade and slope required by the 1982 plan.

17 There was testimony that was attempted to be
18 introduced by an engineer for -- and I say engineer, I
19 think his background is chemistry background and I think
20 his education is engineering as opposed to chemistry -- but
21 it was Dinesh Rajkotia, if I pronounce it properly.

22 His testimony was disallowed by the
23 Examiner. The only testimony that was introduced on the
24 area of the height or grade of the trenches -- the only
25 testimony by the Department, that is, was a visual

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2 I would also point out -- and I think this is
3 important -- in September of I can be wrong in my dates,
4 but it is the fall of 1985, certainly or maybe earlier,
5 well before the close of testimony, there was a point at
6 which the boundary became a significant issue and a survey
7 team was dispatched to locate the boundary.

8 It was actually staked out and located on the
9 property, and at or about that time there was a -- and this
10 is referred to in the brief -- there is a period of time, I
11 think approximately two weeks when a Department survey team
12 was out at the site verifying the boundary as well as
13 taking general measurements of slopes and elevations and
14 things.

15 That team and the results of their
16 observations were never introduced into the record on the
17 issue of whether or not we maintained the grade or the
18 slope. There was agreement as to where the boundary was.

19 So what I am saying is that the only
20 scientific or professional engineering testimony introduced
21 on the point of maintaining the required grade and slope
22 was from the engineers of the Saitherwait office with the
23 exception of that one visual observation of Mr. Maiolie and
24 we had a situation where the Department for two weeks had
25 their experts at the site and declined to introduce their

OR: [unclear]
(Rec)

1
2 indicates this, the Department was there, inspected it,
3 inspected its opening, inspected it before it was filled,
4 observed it as it was being filled, observed the berms
5 being constructed, and over that period of time approved
6 what was being done and a general progression of the
7 trenches down the slope.

8 They did not believe, and they were right in
9 not believing, that there wasn't any violation of the
10 plans. The trenches were not moving out of a permitted
11 area and we didn't think that then and we don't think it
12 now.

13 The Department certainly didn't think it
14 then, and Mr. Gelburd will artfully express their position
15 now.

16 But during that same period of time, there
17 are 26 inspections reports. And as you know better than I,
18 you know there's a section on there for indicating a
19 violation for deviation from approved plans. The only
20 violation in that category in those 26 inspection reports
21 was one notation and if my recollection serves me right,
22 was by Mr. Maiolie concerning that one section of trench
23 four that he observed overfilling.

24 Even in that observation he was not aware
25 when he did that, that the chocolate and vanilla plans

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2 detail exactly correct. How would the Department have
3 known until that time?

4 MR. SHERIDAN: Well, I think it follows from
5 a couple aspects of the Department's position as I
6 understand it.

7 One of the things that we did -- and let me
8 back up a minute -- the Department's, and I'm sure you have
9 seen this in the brief -- the Department rests its position
10 -- they do not rest their position on the boundary line.
11 They do not rest their position on the distance from the
12 boundary line.

13 If they rested their position on the 200 foot
14 they wouldn't have a position because trench five as staked
15 out now is not 200 feet behind the property line, it's 220
16 feet behind. And as we propose to fill it, it is 220 feet
17 behind the property line.

18 The Department rests their position now on
19 the location of telephone poles. They seize on the pole
20 and they say if the pole is shown on a plan, I mean you can
21 define it on the plan, and if your trench is not located
22 the same number of feet from the pole as the trench
23 depicted on the plan, then you are outside your permitted
24 area.

25 So that if they really were using that as a

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2 there was a boundary and it was the property line. And we
3 don't shrink from that. We concede that is, and in fact,
4 part of trench five, and I just clarify what I said before,
5 part of the excavated portion of trench five does not
6 conform with the 200 foot setback.

7 And I am a little confused whether it doesn't
8 conform with the 200 foot or the 220 foot, but that section
9 we concede we have to fill in. ~~We don't dispute that and~~
10 we are prepared to do it.

11 But the rest of it and to the extent that it
12 is 220 feet, and I say 220 because there was a point in
13 time during the hearing where we agreed that instead of
14 setting it back 200 feet, it would be set back 220 feet and
15 there was an inspection of the site by the Examiner, and it
16 was flagged and it was staked out, and an extra 20 foot was
17 put in just to give more room.

18 So that what we say is that is the boundary
19 line and that is the only boundary line specified. Mr.
20 Gelburd I know will make reference to the telephone poles,
21 but I say to you, if you look at the 1962 plan, there is no
22 specification of the poles. They are not marked. They are
23 not designated as PP&L pole number ten or number eight.
24 They are just little circles. There is no legend on there
25 that relates anything to those.

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any type of enforcement action.

MR. SHERIDAN: Let me just say two things, one thing before I answer that. There is some of that in my argument, but I don't rest on that at all. I talk about what DER did and what we did because I think it corroborates everyone's understanding of the effect of the permit documents.

I think the way people acted, ~~if there is an~~ issue before you to decide, I think it's probative, corroborative, helpful to understand how DER handles this and how its inspectors handled this, and what they understood things to be during that period of time.

So I think the fact that they located, approved and inspected the trenches as we opened them and observed the construction of the berms which were wider than eight feet supports our position that when their letter to us said that the minimum distance between the berms is eight feet, it meant what it said. It didn't say maximum distance, it said minimum distance. And that was their understanding of the people in the field. So I think it's helpful.

Now I also advance the argument which you have just referred to, an estoppel situation, and the distinction that I make, and I think it's an important one,

1
2 that there is no environmental harm here, there is no
3 environmental degradation, what does the permit document
4 mean? All the major environmental statutes empower the
5 Department to take enforcement actions for violations of
6 permits.

7 You are suggesting to me that a violation
8 which someone believes doesn't create any environmental
9 harm is not to be noted by the Department and that a permit
10 doesn't really mean anything unless some harm is created.

11 MR. SHERIDAN: No, I don't assert that
12 position at all. And I am just going to underscore it
13 again, I do not primarily rest my case on that argument
14 because I think we are correct and I think the record
15 supports our position on the 200 foot boundary.

16 But on that argument, I think a permit is
17 very meaningful. I think it is a vital document. And I
18 think it is only in the most unusual of cases even without
19 environmental harm where a permit should be disregarded so
20 that if there is a rule that permits it, it should be
21 stingily applied. But if there is a case where it should
22 be applied, this is it.

23 You have, I will say it flat out, in my
24 opinion you have an extremely conscientious operator at
25 that site. It is a good site and you have a situation

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2 dirt.

3 We have to build a berm area that takes the
4 storm water all the way down the east side and properly
5 channels it to that retention basin. That will require
6 dirt.

7 There are depressed areas in the old mine
8 area and in the area fill section which collect water. The
9 little bit I know is that is the cardinal sin. You don't
10 let water collect. Those areas have to be filled and when
11 they are filled it has to be covered. That is going to
12 require dirt and long range during the closure period we
13 have to stockpile dirt and we should stockpile dirt because
14 there is going to be from time to time breakouts and there
15 is going to be situations where damage you have to repair
16 with dirt.

17 So that one of the things that he envisioned,
18 and I say the people from the Department who worked there
19 for three years envisioned, was that trench five was going
20 to be used to provide that dirt.

21 Without trench five it is impossible to bring
22 on to that site the dirt that is necessary to do the work
23 that has to be done, notwithstanding the fact that if we
24 don't fill trench five with trash we have to fill the hole
25 that is there.

1 has been and is the crux of the Department's position.

2
3 There are -- and again I don't use this in a
4 smart term -- but I have in my own note pad list of red
5 herrings. And what I mean by that, I don't mean that
6 somebody through them out as red herrings, but I mean one
7 of the reasons why this case took so long is it was the
8 type thing every time we'd have a meeting or a hearing,
9 another issue would pop up, and I don't mean pop up in bad
10 faith, but it would pop up and then we would have to
11 address it and satisfy the Hearing Examiner that it was not
12 a real problem that affected whether or not we should be in
13 operation.

14 There was a point in time where they
15 questioned whether the soils in trench five were suitable.
16 And there had been at least one test pit dug that was in
17 trench five as currently staked out. There was another
18 test pit dug that would be in the berm area between four
19 and five.

20 They showed that soils were more than
21 adequate.

22 This is a site as I understand it that has
23 unusually deep soil life and that is based on the wells,
24 there are six wells on that site and the soil logs on those
25 wells as well as from the test pits, but our experts have

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1 prepared to fill that in. We have it staked out in a
2 section so we would be 220 feet back.

3
4 During the testimony there was an issue that
5 arose about in one of the proposed retention basin areas
6 evidence of a sinkhole, not in the bottom, but where would
7 be like a side wall area. And we weren't consulted on
8 that, no one approached our experts and said here is a
9 problem, go look at it. It was just raised at a hearing.

10 As I understand it before it was raised at
11 the hearing there was no on-site evaluation or
12 investigation of the location other than a physical
13 observation.

14 So once again, after that was raised our
15 experts went out, and I think it was Mr. Manduke, who is a
16 DER expert, went out in the field, excavated around the
17 area and looked at it, examined it, and everybody agreed it
18 wasn't a problem. So that was addressed.

19 There was an issue raised during the hearing
20 about whether or not this site was, I put notes down -- I
21 even forget the distinctions -- but whether it was dolomite
22 as bedrock which is magnesium carbonite or whether it was
23 calcium carbonate as the bedrock.

24 First of all it was interesting that it was
25 raised. The original soil study on this site was done back

1 know their time loads and their schedules and I know how
2 many sites there are, but we have a man here whose
3 livelihood depends on this and we start examining it and
4 the theory wasn't based on a review of the well driller's
5 logs, it wasn't based on a review of test borings. Our
6 expert I believe testified and we asked them questions
7 about measuring strike and dip of the rock. And I don't
8 pretend to understand that and I didn't develop the
9 questioning. Fortunately Mr. Kares did, but it is a basic
10 method for determining whether this piece of rock that you
11 happen to pick up off the ground is from bedrock or whether
12 it was transported glacially into the soil there.

13 None of that was done.

14 In addition, the Department wisely and
15 properly requires monitoring wells and on this site there
16 was some contention about whether they would have four or
17 whether they would have six and they wanted six. They
18 wanted wells five and six which are the southern most
19 portion of the site.

20 And they got those two extra wells. And with
21 all the wells in place it is clear as a bell that this is a
22 site where the wells are characterized by a low yield.

23 The testimony of the experts was that where
24 you have calcium carbonate that is subject to solutioning,
25

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1 monitoring wells, as of the time of the hearing in
2 September of 1985. Mr. Day-Lewis experienced, a qualified
3 witness for the Commonwealth and our two expert witnesses
4 were in agreement I submit on the following point: That
5 with the exception of well 1B, as of that time they in
6 their expert opinion believed, all three of them, that none
7 of the other wells showed any organics that could be
8 related to the operation of this site or a failure in the
9 renovating capacity of this site.
10

11 The only well that was a problem at that
12 point was well 1B and I will fully address that. But I
13 think that's important to bear in mind. I want to tie that
14 into one thing if I may.

15 This is a site where although the surface
16 topography slopes from north down to south, the direction
17 of the groundwater flow is not from north to south. It is
18 essentially south to north. So that the contamination
19 getting into the groundwater would show up in wells 3 and 4
20 which are the northern most wells.

21 It is also important to bear in mind that the
22 oldest portion of the site where things have been deposited
23 the longest, is the portion immediately adjacent to wells 3
24 and 4.

25 So if those old areas where if you are going

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1 strikes me right, I think it was the Commonwealth who first
2 talked about well 1B venting gas, and we have a number of
3 gas vents around which are supposed to vent gas, but well
4 1B, the Commonwealth testified was venting gas.
5

6 Dr. Smith, who is one of our witnesses,
7 testified also that well 1B was venting gas. And he
8 testified, I think it was between one and two thousand
9 cubic feet per day and that is with the cap off. So you
10 have a flow out, I believe.

11 He then did an analysis throughout the site
12 as a chemist and we brought him in to testify because of
13 his background in chemistry and we thought it was essential
14 to address the vinylchloride and this dichloroethylene.

15 His testimony in his expert opinion was that
16 what was occurring here was a situation where well 1B was
17 acting as a gas vent for the landfill. And what you in
18 fact had was a situation where the well is normally capped
19 and the cap sealed and locked I guess. So that you have a
20 situation where you have a standing column of the casing
21 and you have the gas that is in there standing. And then
22 at the bottom of that column of gas, you have surface water
23 of well 1B.

24 And what he said occurred was the gas in the
25 column of the casing standing like that would become

1
2 MR. SHERIDAN: If I could, before trying to
3 respond to that question, if I could just make what I
4 consider an important point: Our point in addressing this
5 is that what is not occurring -- and I think this is
6 important that it is not occurring -- is that there is not
7 a breakdown in the renovation of leachate. Leachate is not
8 entering the groundwater and contaminating it. What is
9 occurring is basically where the gas that would vent out of
10 the landfill because it is standing is becoming soluble
11 with a small amount of water on the surface.

12 Now you have asked a question concerning the
13 source of the gas and what the compounds. I may have to
14 consult or perhaps even have Mr. Karess address that
15 because I am not prepared, and I know there is testimony or
16 I believe there is testimony in the record that talked
17 about the types of substances that could decompose and
18 produce those gases.

19 THE EXAMINER: I can certainly review the
20 record.

21 You have been arguing for some time here and
22 you have been concentrating on your client's chance of
23 success on the merits which is certainly one of the factors
24 that I have to consider in deciding whether I will issue a
25 supersedeas.

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(Rec)

1
2 peculiar procedural posture in that it started out as a
3 hearing on the supersedeas and progressed somewhat into a
4 hearing on the merits so the burdens of proof got kind of
5 turned around here.

6 Normally in a hearing on the merits the
7 Department would have the burden of proof. But you in
8 requesting the supersedeas have the burden of proof. What
9 is there on the record that demonstrates that there will be
10 no harm to the public if a supersedeas is granted?

11 MR. SHERIDAN: That is fine, Your Honor. I
12 want to talk about groundwater first because that is one of
13 the essential considerations. It is clear where the
14 direction of the groundwater flow is and that is south to
15 north.

16 It is clear that the two wells, 3 and 4 that
17 are directly in the path of that and closest to the oldest
18 portion of the site have not been degraded by the site.

19 It is clear from that that the site is not
20 affecting groundwater. So that I think that one of the
21 basic ingredients. If there was an indication that there
22 was groundwater being contaminated and it was showing up in
23 wells 3 and 4 and could go off site, I think that would be
24 a major factor that would cause problems for us.

25 But that is not the case. There is no

1
2 suggesting that the Board somehow condone improper
3 operation here because it is necessary to complete proper
4 closure? That's what I am hearing.

5 MR. SHERIDAN: No, I don't think I'm saying
6 that.

7 THE EXAMINER: The Board has consistently
8 ruled against that in the past where people have raised
9 arguments, if you don't let me mine off my property, if you
10 don't let me do this --

11 MR. SHERIDAN: I am not saying that. What I
12 am saying, I am saying the following: Assuming that our
13 position is correct on the merits -- and I understand if we
14 are not correct on the merits and if you don't think we are
15 going to be correct on the merits, then our petition
16 falls. That is the first test.

17 THE EXAMINER: Correct.

18 MR. SHEPIDAN: So that for purpose of my
19 argument, I have to assume that we are correct on the
20 merits. I am assuming that and I hope I am moving towards
21 convincing you of that.

22 So that if we have a right to complete trench
23 five, a right in the sense that we are within our boundary
24 or they are estopped. And I like the first position first,
25 that we are within our boundaries. Then what I am saying

1
2 represents the corporation -- to make a few comments which
3 I think will help clarify our position and the mistaken
4 position initially of the Department.

5 There are a few key things I would be remiss
6 in not mentioning. With respect to irreparable harm to the
7 individual operator, closing, assuming closure is just
8 conducted in accordance with this order from the Department
9 which came down December of '84 cost substantial sums of
10 money.

11 My client because of this summary action on
12 the part of the Department, which I suggest as sincerely as
13 I can, is unsupported by evidence of a credible nature by
14 way of layman experts or otherwise in that record, caused
15 him to sell his trucking business at a substantial loss,
16 incur substantial fees with two law firms, and experts,
17 entering into an inordinate requirement of water monitoring
18 that are quickly consuming whatever funds there were
19 available for him to properly close this site.

20 The trucking business is gone and it has
21 already caused that because of the inactivity of your
22 predecessor in this case to do what he said he would do
23 back in January of 1985 after hearing the evidence.

24 THE EXAMINER: I certainly apologize for
25 that.

1 indicates that system works and works well. There is no
2 question about that. If you read Manduke's testimony on
3 cross examination, he concedes I find no evidence of
4 pollution. Take every one of their witnesses, even though
5 they came in -- I won't consider and comment upon their
6 state of preparation; they made some general statements --
7 but as they were asked significant questions regarding
8 their testing procedures, could you have done this, could
9 you have done that? They all eventually agreed we seen no
10 sign of pollution. This system is working.

11
12 Probably the most prominent from an expertise
13 standpoint was Mr. Day-Lewis, very impressive fellow, but
14 he could not refute the Ph.D. in chemistry's conclusions
15 about the presence in LB of certain constituents, and I'll
16 keep to my promise.

17 There were allegations in the order civil
18 penalty assessment petition in December of '84 that there
19 was no sedimentation erosion plan.

20 During the course of the hearing it was
21 presented, together with a copy that was presented to the
22 Department. Going from a position of we never got one, I
23 think Mr. Rashkodia has said he thinks he may have called
24 the expert but never formally replied, indicating that he
25 received it. That's in the record. Regardless of what

1
2 record. Good evidence of this. Mr. Pomponi who originally
3 was in charge of I think the examination and management of
4 this site is brought before the Hearing Examiner and you
5 can evaluate his own reaction, the Examiner's, alleges that
6 they were taking foundry sand in defiance of their permit.

7 On cross examination he is shown a letter
8 from his very Department approving it, acknowledges, well,
9 I guess it was approved.

10 The next issue he was presented for was
11 allegedly a bottle of toxic waste. He is cross examined.
12 Did you make a note of it in your inspection report? No.

13 Did you open the bottle? No. What was in
14 it? Leachate, cool aid or coke cola or chemicals? I don't
15 know.

16 The Examiner asked him, didn't you make note
17 of this? This is the type thing that is filled in with
18 this case suggesting that the real reason for closure won't
19 be found in the record, and it won't.

20 A serious analysis of this record indicates
21 basically that the Commonwealth has tried to come up with a
22 number of theories all of which have failed.

23 You go back to the volumes. There were no
24 concerns about the volumes. Now, suddenly there are
25 allegations daily cover wasn't put down. I'm sure with

1 boring like our expert did? No.

2
3 What is the most reliable way, sir, of
4 finding whether or not daily cover and final cover is
5 placed down? Core boring. Did you see fit to do it? No.

6 That's riddled through this record. We have
7 ill recordkeeping, ill inspection, you name it and suddenly
8 we are going to tie this morass into an indictment that is
9 unsupported in the record. Why? That will come out in
10 time but it is not for you to know now.

11 It is not in the record. We are bound by the
12 record.

13 With respect to the burden, reading the
14 record you will see that all of these allegations were not
15 supported.

16 There are references that we called in a
17 chemical -- excuse me, an industrial chemist to support our
18 position.

19 The record reflects our chemist is a Ph.D.
20 impeccably qualified, and they called no one.

21 The record indicates, particularly the brief,
22 that our engineering team shouldn't be considered as
23 submitting credible evidence.

24 They didn't spend two weeks, they spent three
25 weeks. We never saw their report but yet there are

ORIGINAL
(Red)

1 articles aren't in the record. Evidence is.

2 By Ph.D's in chemistry, by state recognized
3 biologists and geologists.

4 I will try not to belabor. There is an
5 allegation that there was no bonding. Bonding wasn't
6 required, but suddenly let's get this together, he must be
7 closed. That's how this was prepared. And that is why it
8 is so faulty.

9 That is why the record doesn't suggest why
10 this was done. There is some other reasons why this was
11 done. We look to the record in the law. That's how we
12 evaluate a man's future. That's how I know justice, what
13 is in the record.

14 Did the witnesses support these baseless
15 allegations? I suggest they didn't.

16 Now with respect to the chemicals. I think I
17 had a course in chemistry in high school, didn't do rather
18 well and I'm not sure about the Examiner's background, but
19 I would certainly suggest we all defer to the only expert
20 who testified and said this is common. this system is
21 working.

22 Now, Mr. Day-Lewis is cross examined.
23 Robert, is there any suggestion that pollution is getting
24 off the site? No.

1
2 someone said in the paper. Without chlorination, pure
3 water and where does the water run? Through the fill into
4 the home wells and onward. Not one scintilla of evidence
5 that there is pollution.

6 I believe the Commonwealth made some
7 suggestions that a Kramer well could possibly be contained
8 by the site. You will find that in the evidence.

9 An analysis, cross examination, whatever,
10 there are no common constituents in the Kramer well. The
11 Kramer well is located about a mile and a half away, and
12 actually upstream from the Novak site, and very near an
13 old, old Mobile pipeline. That's it. There is no other
14 evidence on that point. Why were they closed? That is the
15 theme of the case, not what's in the record, because it's
16 not there. What isn't here? Why was this done?

17 And a sincere review of the record with any
18 degree of impartiality will lead you to that conclusion
19 why.

20 The bonding as I said was mentioned. Again,
21 without sincerity, without a sincere review of the record.
22 Our brief supports that no bond was required then, but when
23 someone turns the switch, close them, hammer them, no bond,
24 fine them. No basis in law or fact.

25 This case is truly on the supersedeas issue,

1
2 record, Madame Chairman that until you just mentioned it
3 now I was unaware of any such occurrence. The Department
4 believes that the Examiner acted quite properly.

5 MR. SHERIDAN: Perhaps before Mr. Gelburd
6 begins, I just want to note that we have an exhibit to our
7 petition which was an inspection report done on October 23,
8 1985 and I understood we had an agreement that that would
9 be submitted.

10 MR. GELBURD: As of record in our answers to
11 supersedeas petition, we do admit that as a correct copy of
12 the inspection report.

13 MR. KARESS: I thought we all agreed.

14 MR. SHERIDAN: On the one issue of the need
15 for the supersedeas I would just direct your attention to
16 the comments at the end of that report and reading from
17 that it states, this is by the inspector, that a decision
18 on the fate of this site is desperately needed and that is
19 our position.

20 THE EXAMINER: The Board is certainly aware
21 of its obligation there.

22 Mr. Gelburd, what is the story here? We have
23 two diametrically opposed views of the condition of this
24 landfill.

25 MR. GELBURD: At least two.

ORIGINAL
(Red)

1
2 With respect to the criteria that are set
3 forth in there, 21.72B says that a supersedeas shall not
4 issue where there is a showing of pollution or of nuisance

5 There have been both showings on the evidence
6 of this case. I'll go back for a minute and talk a little
7 bit about history. I know this has been gone over at some
8 length but I would like to present the Department's
9 perspective.

10 1972 the original permit was issued there was
11 a plan for the site which I believe is document A-2 in the
12 exhibits. That plan shows proposed final contours for the
13 area fill, the old mine demolition fill. It does not show
14 them for the trench fill section. What it shows is
15 existing contours for the trench fill section.

16 In 1982 when the Department came in from the
17 Norristown Regional Office taking the site over from the
18 Wernersville Office which was disbanding, the Department
19 noted massive amounts of overfilling in the area fill
20 section as evidenced by Exhibit C-2 and said, wait a
21 minute, you are way over grade here, do some studies, have
22 your engineer give us an analysis of how you have been
23 overfilling.

24 Mr. Costello then, the Novak engineer did
25 that, and sure enough, hundreds and hundreds of thousands

ORIGINAL
(Red)

1
2 line drawn through that pole, pole number ten, which by the
3 way, both Mr. Satterthwaite and Mr. Emanuel were unable at
4 first to locate without outside aid when they testified
5 about this site, when they were looking at the plans.

6 The third way to locate where the trenches
7 ought to be is by the coordinate system that was approved
8 by the Department in the 1982 permit amendment. That
9 system shows the bottom boundary, the southernmost boundary
10 of trench five as being located at station 18 plus 00. And
11 if you coordinate that plan which I believe is A-24 with
12 the so-called chocolate and vanilla, the side view of the
13 trenches which is A-4, I believe, you will find that that
14 is as far downhill as the bottom of the last trench was
15 supposed to be.

16 It is measurable either by reference to a
17 permanent marker, the pole, by reference to topography, or
18 by reference to the coordinate system that is set up on the
19 approved permit plan in 1982.

20 If I may employ a rather crude visual aid, I
21 think there is not too much dispute that the Department's
22 position is the rectangles I am showing you on this piece
23 of paper outline in black would be the trenches the
24 Department originally approved them. And if you recall the
25 testimony of Mr. Beitler the actual trenches as installed,

ORIGINAL
(Red)

1 boundary, whether you are talking about reference to the
2 original permit plans or you are talking about a 200 foot
3 offset -- that whatever boundary you are talking about was
4 violated. It was only after that boundary was violated
5 that the Department took enforcement action coincidental
6 with a very late submission of a groundwater sample result
7 which showed large concentrations of volatile organics
8 turning up into the monitoring wells, wells, one and two.

9
10 The Department certainly was justified in
11 taking enforcement action at that point. They said, wait a
12 minute, you have got pollution, you are beyond your permit
13 limits, what is going on here? Conduct a hydrogeologic
14 study -- two elements of which have not been addressed and
15 I'll be talking about that later -- give us a closure plan
16 because you are done filling the site and put up a bond.
17 That is what the Department said, that's what the
18 Department did.

19 There are very very many disputes as to
20 interpretation of the facts in this case. Some of the more
21 interesting questions are why is it that monitoring well
22 one, in whichever incarnation it is, always shows up
23 contaminations every time you run it for volatile
24 organics? It showed up as well one. Oh, my goodness, say
25 the petitioners, the sides of the casing are perforated and

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(Red)

1
2 With respect to well 1A, it is drilled under
3 the supervision of Novak's consultants, it is put in, it is
4 tested, well, more volatile organics. Well, there is
5 something wrong with the well. And it wasn't properly
6 constructed, there's a crack in the side and leachate is
7 getting into the side. Where is that leachate coming
8 from? Why can't the petitioners construct a well that
9 works?

10 We come to the third well, we agreed close
11 that one. Obviously it is not going to be any good if
12 there's a break in it, seal it up, put in another well to
13 indicate something about that particular area of landfill.

14 Well, 1B goes in, volatile organics showing
15 up again, and in addition, explosive levels of methane
16 gas. You have a monitoring wells that is venting gas and
17 you have got according to the testimony of Mr. Maiolie and
18 Mr. Rajkotia gas vents that aren't venting gas.

19 The petitioners don't have a grasp of what is
20 going on at this site. They can't explain where the gas is
21 coming from that is bubbling up. There is no indication is
22 it coming through a crack in the casing? Is it in fact
23 bubbling up through the groundwater, and if it is bubbling
24 up through the groundwater, then under Dr. Smith's own
25 theory, that landfill is polluting the groundwater because

1 the site, so you can't blame them on background.
2

3 THE EXAMINER: But have they reached a level
4 where the Department considers them significant enough to
5 show a problem occurring at this landfill?

6 MR. GELBURD: Well, Mr. Satterthwaite did
7 testify that the results with respect to monitoring well
8 one were in excedence of safe drinking water standards.
9 That is in his cross examination.

10 THE EXAMINER: ~~That wasn't my question.~~

11 MR. GELBURD: I don't know what more concern
12 we can have.

13 THE EXAMINER: Well, you have to interpret a
14 conclusion in context in which the question was asked. My
15 question is a general one. The Department in reviewing the
16 results from these monitoring wells over the years, has it
17 found any sort of pattern which would lead to the
18 conclusion that this natural renovation landfill isn't
19 properly working? Are we dealing with isolated instances?

20 MR. GELBURD: Well, I think the answer to
21 both of those questions is no. In the first place, we are
22 not talking about a pattern prior to the fall of '74
23 sampling which arrived in fall of '74, was taken in June of
24 '84 -- excuse me.

25 So prior to that time we did not have sample

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(Reg)

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1
2 MR. GELBURD: Well, not with respect to the
3 concentrations. The fact that they are there at all shows
4 that something is wrong with the site. And it is the
5 responsibility of Novak to identify it. We don't believe
6 it has been identified.

7 THE EXAMINER: I understand your position.

8 MR. GELBURD: With respect to the second part
9 of the 21.78(B) criterion, existence of a nuisance,
10 Lawrence Coal and PUC versus Israel stand for the
11 proposition that a violation of law, being a statutory
12 public nuisance should be enough to preclude this kind of
13 relief.

14 We have by counsel's own admission an
15 existing violation of the permit boundary in terms of
16 height on the southernmost existing trench. That in itself
17 should dispose of the supersedeas matter.

18 But there is much, much more. There is the
19 problems with erosion and sedimentation control. There is
20 the problems with gas venting. Testimony is replete that
21 some of the installed gas vents are not working and that
22 other vents that ought to be in there, Mr. Rajhotia
23 testified are not in. There is no reason why they can't be
24 put in. But there has not been compliance with the
25 approved gas management plan.

1 it is, of course, their burden to carry.

2 With respect to prevailing on the merits, we
3 have talked a good deal about that.

4 The likelihood of injury to the public, those
5 same two cases, Lawrence Coal and PUC versus Israel say
6 that a diminution of any public resource is harm to the
7 public, a violation of a statute, a regulation is injury to
8 the public. And we have a large number of those here. Not
9 to mention the fact that the site is not bonded, as
10 required by Section 505A and 503B of the Solid Waste
11 Management Act.

12 Again, I have to take exception to counsel's
13 representation in which he claimed that the Department was
14 "fining" Novak for not having a bond. I believe that if
15 the civil penalty which the Department issues is examined,
16 it will show that each particular violation is tied into a
17 penalty amount. I don't believe there is one for not
18 having a bond.

19 We are not penalizing Novak for not having
20 one in the past. What we are saying is if you wish to do
21 anything on this site, you have got to have a bond now as
22 required by the statute. In fact, even if you have
23 completed every bit of landfilling you could ever possibly
24 do leaving aside the demolition waste area, you'd still
25

ORIGINAL
(heq)

1 specifically called in its groundwater analysis for
2 fracture trace analysis and a study of groundwater
3 mounding. As Mr. Manduke testified, these can be major
4 factors in the transmission of polluting substances through
5 groundwater, particularly with respect to carbonate
6 formations
7

8 These haven't been addressed. We haven't
9 seen the information about that even though the order
10 called for them to be submitted quite some time ago.

11 If Novak hasn't addressed these issues that
12 the Department believes to be important with respect to
13 analyzing what is going on at this site, how can Novak then
14 be allowed to argue, well, it is inconclusive. You don't
15 have any evidence that there is a polluting system taking
16 place.

17 The Department since 1982 had constantly met
18 with Mr. Novak and his engineer in an attempt to get this
19 site into shape. It was overfilled and badly vegetated,
20 testimony being that it was very rainy, and it was real
21 hard to establish vegetation over a three year period, 1982
22 to 1984. And indeed as of today, as of the inspection
23 report, as an exhibit to the petition at issue here,
24 vegetation is still not complete. There is really no
25 excuse for that.

1
2 We have sites to permit. The public has to
3 know that we will enforce the boundaries we put in those
4 permits or we are never going to be able to locate a site
5 anywhere. So from that point of view, it is extremely
6 critical that what is submitted to the Department and
7 approved by the Department be the outer limit of what is
8 allowed by the Department.

9 With respect to surface water management at
10 this site, it is a moderate to severe problem. With
11 respect to vegetation, a moderate problem. With respect to
12 groundwater pollution, it is there, the jury is still out,
13 partly due to the failure of Novak to conduct the study
14 that was called for in the order and due more than a year
15 ago.

16 MR. KARESS: That order was appealed.
17 Forgive me.

18 THE EXAMINER: I think all counsel have to
19 bear in mind that what is before the Board is the
20 reasonableness of the Department's action and not the state
21 of Novak's compliance with the order. I am not a court of
22 equity. I only have those powers that the General Assembly
23 gives me and that is to decide whether the Department's
24 action was an abuse of discretion.

25 MR. GELBURD: With respect to the 200 foot

1
2 their boots dirty with respect to the measurement of these
3 trench sizes.

4 As Mr. Macili has testified, the trenches are
5 a lot bigger than the Board is being told by Novak.

6 In terms of surface area or volume, however
7 you want to measure it, Novak has put in as much as the
8 Department intended to permit and did, in fact, permit and
9 Novak had any right to expect.

10 Leaving that aside, however, S-1 clearly
11 shows that, in fact, the permit boundary of 200 foot offset
12 was violated. Mr. Satterthwaite got up on the stand and
13 confidently testified we have a clear 200 foot boundary all
14 the way around. That was before the survey was done.

15 I believe you will find Mr. Macili also
16 testified that after Martin Bradbury and Griffith, the
17 surveyors contracted by Novak finished their survey of that
18 boundary, finding no violations, that the Department's
19 team, including Mr. Macili met with them, they sat down at
20 what is called a "light table" did some overlays on charts
21 at the site and that Martin Bradbury and Griffith were
22 persuaded that they had erred in measuring that offset,
23 vis-a-vis the southernmost excavation. And that the
24 excavation did, in fact, go over the 200 foot boundary.

25 S-1 shows DER's survey results relying on the

1 that is reflective of their whole approach in this case.

2
3 I think you properly framed the questions
4 regarding diminimus. You have heard other cases and you
5 have heard situations that deserve the Department's
6 attention so much more than this one.

7 I can't think of anything in this record that
8 is other than diminimus if it reaches that level. With
9 respect to a couple other things, the levels of
10 contaminants that concern Mr. Gelburd, as indicated I think
11 in the first hearing up in Allentown, which was the second
12 hearing, it was amply put on the record that levels that
13 concerned the Department were not sufficient or even
14 considered detectable by industry accepted standards, EPA
15 accepted standards.

16 As far as the explosive gases, methane is a
17 common gas in a landfill. That is why you do have
18 venting. The fact that some vents don't produce it is a
19 common occurrence. Have we heard of any explosions? Have
20 we even seen on that record one person who appeared and
21 offered testimony about odor? Offered testimony about
22 pollution that was reliable? Reliably or in any way
23 related to anything conducted on the site, no.

24 Again, what is not on the record is more
25 important than what is on, apparently.

1 with a substituted trier of fact and law, mostly fact,
2 because the disputes aren't really there. The record
3 clearly reads well in support of our position.
4

5 He indicated that our position was
6 inconclusive on the chemicals in the groundwater.

7 We bring in a well regarded expert who is
8 deployed by the Commonwealth, by many of the other states
9 on the eastern seaboard. He's a recognized expert, gives
10 us an explanation.

11 We bring in a Ph.D. whom he characterizes as
12 an industrial chemist. They bring in no one. We give you
13 an explanation, an excellent explanation that is borne out
14 by theory, accepted doctrine and that is inconclusive?
15 When compared to no opinion or no support. And the
16 approach that we are going to open up the textbook and talk
17 about dolomite and pinacles and overlook everything else.
18 But that position is consistent with every other position
19 the Commonwealth has taken in this case.

20 The plans that were never filed that were
21 suddenly found. All of this just doesn't make sense to
22 me. And I don't think it is supported in the record
23 either.

24 THE EXAMINER: Mr. Sheridan, do you have
25 anything to add?

1
2 September in his testimony that he has no concern about any
3 of the other wells except well 1B.

4 Dr. Smith clearly in his expert opinion
5 explained the nature of the condition existing at well 1B.
6 So this is not a situation where any of the other wells are
7 a concern, and I rely on the testimony of Mr. Day-Lewis
8 called by the Commonwealth.

9 With regard to vegetation, Mr. Novak, while
10 this operation was closed and without revenue coming up,
11 has made a concerted effort to improve the vegetative
12 condition at that site. He has improved it significantly
13 so that now there is 80 percent vegetative cover at the
14 site. With this spring coming on, he will try and we do
15 hope to make that 100 percent. But it is not a situation
16 to any extent where he has ignored it. To the contrary,
17 the testimony detailed the efforts that he made.

18 But as Your Honor is aware, when you have
19 proper cover on a surface that is compacted, it is
20 difficult to establish vegetation, try as you may. But as
21 a result of extensive efforts he has done a super job in
22 bringing it as close as possible to 100 percent and the
23 rest will be done this spring.

24 That's all I have.

25 THE EXAMINER: Thank you, counsel. I will



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

Bethlehem Office
520 East Broad Street
Bethlehem, PA 18018
861-2070

May 8, 1986

Re: Solid Waste Inspection
100534
May 6, 1986

Louis J. Novak
R.D. #1
Allentown, PA 18104

Dear Mr. Novak:

Enclosed please find the completed forms for the referenced inspection. Please refer to Part C (Comments) of the inspection form for specific comments or requests.

If you have any questions, please do not hesitate to give me a call.

Very truly yours,

James A. Dolan
Waste Management Specialist

JAD/bal

CC: B. Beitler
Division of Compliance & Enforcement

Original
File

002410

201104

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT**

**INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES,
DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10**

IDENTIFICATION NUMBER (1-7) 100534	INSPECTION DATE (9-14) 05-06-86	INSPECTORS SOC. SEC. NO. (18-24) 182-34-6003
NAME OF DISPOSAL FACILITY NOVAK SANITARY LANDFILL	FACILITY ADDRESS R D #1 ALLENTOWN PA 18041	
MUNICIPALITY S. WHITEHALL TWP	COUNTY LEHIGH	
FACILITY PROPRIETOR (NAME, ADDRESS, AND TELEPHONE NUMBER) LOUIS J. NOVAK SAA 215-295-6251		
DAILY VOLUME RECEIVED CLASSED	ANNUAL REPORT RECEIVED N/A	DAYS PER WEEK OPERATED N/A

1 - Compliance, 2 - Non-Compliance, 3 - Not applicable

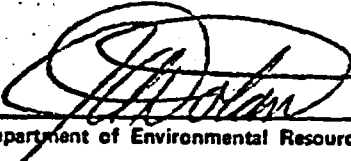
CHAPTER CITATION		1	2	3
26 75.21(m)(3)	Suitable barrier blocks access to site when attendant is not present.			X
27 75.21(s)	25' setback line buffer zone present			
28 75.21(i)(1), (2), (3)	Adequate fire equipment or procedure for minimizing fire hazard			
29 75.21(q)	Approved operational safety program being utilized			
30 75.21(p)	Effective vector control program utilized at site where needed. Circle vector program required: bird, mosquito, rodent, fly			
31 75.21(m)(2)	Hours of operation prominently posted			
32 75.21(k)	Telephone or other communications available			
33 75.21(o)(1)	Salvaging occurs in accordance with regulations			
34 75.21(r)(1), (2), (3), (4), 75.24(e)(2)(vii)(viii)	Operational records maintained and method of measurement provided			
35 75.24(c)(2)(xxi), 75.37(j) & 75.38 II(8)(viii)	Final minimum uniform two foot layer of compacted cover material placed on surface of final lift			
36 75.24(c)(2)(i), 75.37(e) & 75.38 II(8)(viii)	Surface water management administered at the site			
37 75.24(c)(2)(ii), (iii), & 75.37(d)(1), (2)	Final slopes within 1 to 15 percent or as approved by Department			
38 75.24(c)(2)(xi) & 75.38 II(8)(viii)	Adequate source and type of cover material being utilized			
39 75.24(c)(2)(v) & 75.38 II(8)(ii)(iv)(vi)	Site access roads are negotiable by loaded collection vehicles			
40 75.24(c)(2)(ii)(iii), 75.37(d)(1)(2) & 75.38 II(8)(viii)	Slopes, benching and terracing in accord with regulations			
41 75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(ii)	Fire breaks			

201105

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENTINSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES
DEMOLITION SITES, FLYASH SITES, SLAG SITESCOMMENTS:
FORM NO. 10, 11, & 12DISPOSAL FACILITY 100534
AKONAK SANITARY LANDFILL
DATE 05-06-86

Site was given a brief inspection in conjunction with annual split sampling. Site remains basically the same as right-of-way barrier has created a breach in the berm between the 4th trench & proposed trench 5, where surface water had been ponding & causing a leachate problem. Surface water now drains off of SW corner of trench 4 into the proposed trench 5. This thus becomes another sedimentation basin. No leachate breakouts were seen. Demo area was not observed.

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(Red)


05-06-86
Department of Environmental Resources Representative


Mailed
Operator

201106

DER-RECEIVED
NORRISTOWN

JUN 23 1986

FOX, DIFFER, CALLAHAN, ULRICH & O'HARA

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PARKE H. ULRICH
FRANCIS P. O'HARA
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(1935-1975)

RUSSELL E. ELLIS
OF COUNSEL

JUN 12 1986

June 10, 1986

Honorable Maxine Woelfling, Chairman
Environmental Hearing Board
221 N. Second Street, Third Floor
Harrisburg, PA 17101

Lehigh Co.

Re: Novak Sanitary Landfill, Inc. vs. DER
EHB Docket No. 84-425-W

Dear Judge Woelfling:

We appeared before you on Tuesday, March 25, 1986 for oral argument on a Petition for Supersedeas which was filed on January 31, 1986 on behalf of appellants.

The Novak Sanitary Landfill has been closed since December 17, 1984 pursuant to the Department's Order dated December 13, of that year. An Appeal and Petition for Supersedeas was promptly filed and hearings were held in December of 1984 and January of 1985. Although further testimony was taken on the Petition for Supersedeas in April of 1985 and several conferences were held with the parties by the Hearing Examiner, no decision was ever rendered with respect to supersedeas. Furthermore, although all testimony on the case was concluded in September of 1985, no decision on the appeal itself has ever been rendered.

Accordingly, there are two matters outstanding, our pending Petition for Supersedeas and an overall decision on the Appeal.

There is a serious and pressing environmental need to bring this matter to a conclusion. The site should be completed and developed in a manner that enables surface water to be shed from the fill area. As you know, trench #5 is partially excavated and has been in that condition since December of 1984 when the site closed. It traps and holds water thus preventing proper drainage of the water from the site. This naturally increases the volume of surface water penetrating the site. Furthermore, there are drainage swales and other surface water control improvements which cannot be completed and implemented until the outstanding issue concerning trench #5 is resolved. It is absolutely necessary

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Continued . . . /2

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JUN 18 1986

COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD
221 NORTH SECOND STREET
THIRD FLOOR
HARRISBURG, PENNSYLVANIA 17101
(717) 787-3483

MAXINE WOELFLING, CHAIRMAN

EDWARD GERJUOY, MEMBER

M. DIANE SMITH
SECRETARY TO THE BOARD

June 16, 1986

Michael J. Sheridan, Esq.
FOX, DIFFER, CALLAHAN, ULRICH & O'HARA
317 Swede Street
Norristown, PA 19401

Re: NOVAK SANITARY LANDFILL, INC.
V. COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL RESOURCES
DOCKET NO. 84-425-W

Dear Mr. Sheridan,

Thank you for your letter of June 10, 1986, reminding the Board of the issues outstanding in the Novak matter. Given the current constraints on the Board's resources, I would be remiss in suggesting to the parties that a decision will be reached by a date certain. At present, my hearing calendar is filled until the end of the year, as is Mr. Gerjuoy's. And, we are both awaiting the arrival of our new law clerks. However, please be assured that we will decide the matter as expeditiously as possible, given our available resources.

Sincerely yours,

Maxine Woelfling

MAXINE WOELFLING, CHAIRMAN

MW/nb

cc: Bureau of Litigation
Kenneth A. Gelburd, Esq./DER Eastern ✓
Martin Karess, Esq.

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DER RECEIVED
NORRISTOWN

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

JUN 26 1986

Bethlehem Office
520 East Broad Street
Bethlehem, PA 18018
861-2070

June 25, 1986

Re: Solid Waste Inspection
100534
June 24, 1986

Louis J. Novak
R.D. #1
Allentown, PA 18104

Dear Mr. Novak:

Enclosed please find the completed forms for the referenced inspection. Please refer to Part C (Comments) of the inspection form for specific comments or requests. Also, attached are the inorganic results from the annual split samples taken on May 6, 1986.

If you have any questions, please do not hesitate to give me a call.

Very truly yours,

James A. Dolan
Waste Management Specialist

JAD/bal

Enclosure

CC: B. Beitler
Division of Compliance & Enforcement

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DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

JUN 26 1986

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES,
DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10

IDENTIFICATION NUMBER (1-7) 100534		INSPECTION DATE (8-14) 06-24-86	INSPECTORS SOC. SEC. NO. (16-24) 182-34-6003
NAME OF DISPOSAL FACILITY NOVAK SANITARY LANDFILL		FACILITY ADDRESS R.D.#1 ALLENTOWN 18104	
MUNICIPALITY S. WHITEHALL TWP		COUNTY LEHIGH	
FACILITY PROPRIETOR (NAME, ADDRESS, AND TELEPHONE NUMBER) LOUIS J. NOVAK SAA 215-395-6251			
DAILY VOLUME RECEIVED CLOSED	ANNUAL REPORT RECEIVED N/A		DAYS PER WEEK OPERATED N/A

1 - Compliance, 2 - Non-Compliance, 3 - Not applicable

CHAPTER CITATION		1	2	3
26 75.21(m)(3)	Suitable barrier blocks access to site when attendant is not present.			
27 75.21(s)	25' setback line buffer zone present			
28 75.21(l)(1), (2), (3)	Adequate fire equipment or procedure for minimizing fire hazard			
29 75.21(q)	Approved operational safety program being utilized			
30 75.21(p)	Effective vector control program utilized at site where needed. Circle vector program required: bird, mosquito, rodent, fly			
31 75.21(m)(2)	Hours of operation prominently posted			
32 75.21(k)	Telephone or other communications available			
33 75.21(o)(1)	Salvaging occurs in accordance with regulations			
34 75.21(r)(1), (2), (3), (4), 75.24(c)(2)(vii)(viii)	Operational records maintained and method of measurement provided			
35 75.24(c)(2)(xxi), 75.37(j) & 75.38 II(8)(viii)	Final minimum uniform two foot layer of compacted cover material placed on surface of final lift			
36 75.24(c)(2)(i), 75.37(e) & 75.38 II(8)(viii)	Surface water management administered at the site			
37 75.24(c)(2)(ii), (iii), & 75.37(d)(1), (2)	Final slopes within 1 to 15 percent or as approved by Department			
38 75.24(c)(2)(xi) & 75.38 II(8)(viii)	Adequate source and type of cover material being utilized			
75.24(c)(2)(v) & 75.38 II(8)(ii)(iv)(vi)	Site access roads are negotiable by loaded collection vehicles			
75.24(c)(2)(iii)(iii), 75.37(d)(1)(2) & 75.38 II(8)(viii)	Slopes, benching and terracing in accord with regulations			
41 75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(iii)	Fire breaks			

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DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

JUN 26 1986

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES,
DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10

1 - Compliance, 2 - Non-Compliance, 3 - Not applicable

CHAPTER CITATION		1	2	
42	75.24(c)(2)(xxiv), 75.37(k) & 75.38 II(6)			X
43	75.24(b)(4)(i), 75.37(k)(6) & 75.38 II(8)(i)			
44	75.24(c)(2)(xi), 75.37(k) & 75.38 II(8)(iii)			
45	75.24(c)(2)(x)			
46	75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(iv)			
47	75.25(h)			
48	75.25(ii)			
49	75.25(o)(3)			
50	75.26(a) & 75.37(g)			
51	75.26(o), 75.37(g), 75.38 II(8)(viii)			
52	75.26(b), 75.37(k)(2), (3), 75.38 II(8)(ii)			
53	75.26(a)			
54	75.26(f)			
55	75.26(d) & 75.38 II(8)(vi)			
56	75.26(i) & 75.38 II(8)(vii)			
57	75.26(s)			
58	75.26(n)			
59	75.26(d) & 75.38 II(8)(iv)			
60	75.26(ii)			
61	75.26(q), 75.37(k), (s) & 75.38 II(8)(x)			
62	75.26(g), (h) & 75.38 II(8)(vi)			
63	75.26(j), (k)			
64	75.26(c)			
65	75.26(o), (p), 75.37(j), 75.38 II(8)(ix)			
9	Chapter 101(9)(e)(2)			N

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NORRISTOWN

JUN 26 1986

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES
DEMOLITION SITES, FLYASH SITES, SLAG SITES

COMMENTS:
FORM NO. 10, 11, & 12

DISPOSAL FACILITY 100534
NOVAK SANITARY LANDFILL
DATE 06-24-86

SEE LAST INSPECTION FOR COMMENTS

SITE WAS COMPLETELY DRY W/NO STANDING WATER

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Department of Environmental Resources Representative

MAILED
Operator

APPLICANT, INSPECTOR, REGIONAL OFFICE 201112

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FOURISTOWN

AUG 28 1986



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

841 Chestnut Building
Philadelphia, Pennsylvania 19107

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

In Reply Refer To: 3HW12

Mr. Louis J. Novak
RD #1
Allentown, PA 18104

Re: Novak Sanitary Landfill

Lehigh Co.

Dear Mr. Novak:

The U.S. Environmental Protection Agency (EPA) is seeking information concerning a release, or the threat of a release, of hazardous substances into the environment at the above referenced facility. Pursuant to the authority of Section 3007(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6927(a), and Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Section 9604(e), you are requested to furnish all information and documents in your possession, custody or control, or in the possession, custody or control of any of your employees or agents which concern, refer, or relate to hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14). EPA is particularly interested in hazardous substances which were transported to, or stored, or disposed of at the Novak Sanitary Landfill, located along Orefield Road, South Whitehall Township, Lehigh County, PA, which was formerly owned and operated and is currently owned by you. (See enclosed "Location Map")

All information and documents requested are due to the address listed below within ten (10) calendar days of receipt of this letter.

The response should include, but not be limited to, information and documentation concerning:

1. The types and quantities of the substances sent to the Novak Sanitary Landfill;
2. The dates that such substances were sent to Novak Sanitary Landfill;
3. The state of the substances sent to the Novak Sanitary Landfill and the method by which the substances were contained or disposed of (i.e., liquid or solid in drums or uncontained, placed in lagoons, landfilled, placed in piles, etc.);

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4. Copies of any correspondence between you and any regulatory agencies regarding such substances;
5. Copies of any correspondence between you and any third parties regarding such substances;
6. Copies of any documents relating to any other person who generated, treated, stored, transported or disposed, or who arranged for the treatment, storage, disposal, or transportation of such substances at the Novak Sanitary Landfill;
7. Copies of any deeds, rights of way, leases, or other real interests which you have or have had in the Novak Sanitary Landfill, and;
8. The current custodian, location, description, and identity of any of the above referenced documents you were unable to obtain, and all efforts taken to obtain such documents;

In addition to the above information, if you are privately insured against releases of hazardous wastes or substances as a result of the handling of such materials, please inform us of the existence of such insurance and provide us with copies of all insurance policies.

As used herein, the term "documents" means writings (handwritten, typed or otherwise produced or reproduced) and includes, but is not limited to, any invoices, checks, receipts, bills of lading, weight receipts, toll receipts, correspondence, offers, contracts, agreements, deeds, leases, manifests, licenses, permits, bids, proposals, policies of insurance, logs, books of original entry, minutes of meetings, memoranda, notes, calendar or diary entries, agendas, bulletins, notices, announcements, charts, maps, photographs, drawings, manuals, brochures, reports of scientific study or investigation, schedules, price lists, telegrams, teletypes, phono-records, magnetic voice or video records, tapes, summaries, magnetic tapes, punch cards, recordings, discs, computer printouts, or data compilations from which information can be obtained or translated.

You are entitled to assert a claim of business confidentiality covering all or any part of the submitted information, in the manner described in 40 C.F.R. Section 2.203(b). Information subject to a claim of business confidentiality will be made available to the public only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. Unless a business confidentiality claim is asserted at the time the requested information is submitted, EPA may make this information available to the public without further notice to you.

Failure or refusal to comply with this request within the specified period is a violation of Federal law which may result in further enforcement action, including but not limited to, civil penalties of up to \$25,000 per day of violation, and criminal fines of up to \$50,000 per day and/or imprisonment of up to two years, as stipulated in 42 U.S.C. §§ 6928(c), (d), and (g).

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Please send the required information to:

Ms. Humane Zia
U.S. Environmental Protection Agency, Region III
CERCLA Remedial Enforcement Section (3HW12)
641 Chestnut Building, 6th Floor
Philadelphia, PA 19107

If you have any questions concerning this matter, please contact Humane Zia at (215) 597-8214.

This information collection request is not subject to Office of Management and Budget review under the Paperwork Reduction Act, 44 U.S.C. §§ 3501 - 3520.

Sincerely,



Bruce P. Smith, Chief
Hazardous Waste Enforcement Branch

Enclosure: Location Map

cc: Donald A. Lazarchik, P.E., Director
Pennsylvania Department of Environmental Resources
Bureau of Solid Waste Management

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201115

COMMONWEALTH OF PENNSYLVANIA
Before The
ENVIRONMENTAL HEARING BOARD

In the Matter of:

LOUIS J. NOVAK, et al

v.

PENNSYLVANIA DEPARTMENT OF
ENVIRONMENTAL RESOURCES

:
:
:
:
:

DOCKET NO. 84-425-M

POST-HEARING MEMORANDUM OF COMMONWEALTH
DEPARTMENT OF ENVIRONMENTAL RESOURCES

A. FINDINGS OF FACT

Appellants are: Louis and Hilda Novak (individually and as husband and wife), individuals residing in South Whitehall Township, Lehigh County; and Novak Sanitary Landfill, Inc., a Pennsylvania corporation doing business in South Whitehall Township, Lehigh County (Louis, Hilda and NSL, respectively; "Novak" collectively).

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Appellee is the Commonwealth Department of Environmental Resources (DER). Louis and Hilda jointly own a piece of property in South Whitehall Township known as the Novak Landfill (the

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landfill) [NT 323-4]¹.

Louis is the president, and Hilda the vice-president, of NSL, through which, as site manager, Louis has operated the landfill over the years [323-4].

Novak has been operating the landfill since at least 1968 [19].

In 1969, Novak filed an application for a solid waste management permit with DER for operation of the landfill [14].

In response to the 1969 application, DER issued to Louis and NSL Solid Waste Management Permit No. 100534, which contemplated two distinct types of municipal waste landfill operation: on the larger, northern portion of the site, area filling, and on a smaller southern portion, trench filling [477, A-1, A-2].

Area filling is a method of landfilling solid waste by depositing it on the surface of the ground, while trench filling is landfilling of solid waste into trenches which the disposer has excavated in the ground [14-30]. The permit which DER issued to Novak in 1972, and the approved plan which was part of (Red)

¹Notes of Testimony, Vol. IV, December 31, 1984, pp. 323-4. As the transcripts are all consecutively paged, further references to them will consist of bracketed page numbers, thus: [323-4]. Appellants' and DER's exhibits will be referred to by their exhibit numbers, as will stipulated survey exhibit S-1.

permit, did not provide specific details of trenches to be dug in the trench fill section of the landfill; rather, it delineated the portion of the entire site on which active deposition of waste into trenches was permissible. It also provided for a setback of a minimum of two hundred feet from the landfill's southern boundary to any active waste deposition [512-513; A-2].

The approved plan which was part of the 1972 DER permit did show allowable final elevations and grades for the area fill section of the landfill [A-2].

From 1971 until 1982 the landfill was regulated by DER's Wernersville Regional Office [497; 508].

From at least 1971 until 1982 Novak operated the landfill by depositing solid waste on the area fill section of the site [14-30; 311-313].

In February 1982 DER's Wernersville Regional Office was disbanded, and responsibility for regulating the landfill was transferred to the DER Norristown Regional Office [497, 499, 657-8].

Shortly after assuming responsibility for regulating (ORIGINAL Red)
Novak Landfill, DER's Norristown regional solid waste management staff made an assessment of the site. The assessment was made by Operations Supervisor Bruce Beitler, Solid Waste Specialist Michael Maiolie, engineer Dinesh Rajkotia, hydrogeologist Joseph Manduke and soil scientist John Zwalinski [499].

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After making the assessment, the DER solid waste management staff concluded that the landfill lacked an adequate gas management plan and that Novak had overfilled the site, exceeding boundaries allowed under the 1972 permit [499-500].

During the summer of 1982, DER staff held a series of on-site meetings with Louis and with Novak's consulting engineer, C.A. Costello, to discuss the overfilling on the area fill portion of the landfill, lack of adequate vegetation and daily and final cover, the need for remedial action, and the need for a gas venting plan concerning the entire landfill [499-500, 554].

DER staff, in those meetings, requested that Novak cause their engineer Costello to submit to DER calculations concerning the amount of solid waste that Novak had placed in the area fill portion of the landfill beyond that allowed by the approved permit plan [487-8].

In response to DER's request, Costello submitted to DER a chart entitled "Volume Overfill", which measures fill volume at 110 portions of the area fill section. Of those 110 portions, 92 were very substantially overfilled. The total overfill shown on the chart was 625, 689.81 cubic yards, or 16,893,625 cubic feet [487-8; C-2].

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The overfilling Novak had conducted on the area fill portion of the landfill, as well as Novak's failure adequately to vegetate the area fill, had an adverse effect on control of storm water and erosion at the site [493, 549, 554].

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As a result of its investigation and the overfill computations submitted to it by Costello, DER advised Novak to stop depositing waste in the area fill portion of the landfill and to submit an application to amend the 1972 permit to show depth, elevation and location of trenches in the trench fill portion, as well as a gas control plan [311-313; 479-80].

In September 1982, Costello submitted to DER on Novak's behalf a plan which was intended to show location of proposed gas vents throughout the landfill site, to show proposed contours and topography of the trench fill section after filling was completed, and to provide for appropriate grading of the transition portion between the area fill and trench fill sections, which threatened, due to Novak's previous overfilling, to form a cliff [479-80; A-24].

On September 15, 1982, DER issued to Louis and NSL an amendment to Solid Waste Management Permit No. 100534, incorporating the gas venting plan Costello had submitted [C-17].

Since Novak's permit was first issued in 1972 the approved plans have always stated that utility poles at the site, belonging to Pennsylvania Power and Light Company (PP&L poles) were to be used for bench marks, that is, as control reference points, both for vertical and horizontal boundaries [575-6, 622; A-2].

On Novak's approved 1972 permit plan, on its 1978 revision, on Novak's 1982 gas venting submission, and its

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January 1983 revised gas venting submission showing final contours for the trench fill section, the southernmost boundary of the southernmost trench to be excavated was always shown to be located some seventy-five to eighty feet north of PP&L pole number 10. That southernmost trench to be excavated was referred to on all the aforementioned plans as "trench 5" [182-3; 571-3; 1150-1; A-2, A-24].

Between August and December 1982, DER staff met with Novak representatives, including Costello and Louis, to examine the portion of the trench fill section on which Novak proposed to conduct active landfilling. ~~That portion at no time extended south of what was shown to be the southern boundary of "trench 5" on the 1978, 1978 or 1982 plans [478-482; 587-592; 633; A-2, A-24].~~

By letter dated August 24, 1982, DER Solid Waste Operations Supervisor Bruce Beitler requested of Novak cross section drawings of proposed trenches in the trench fill portion of the site [A-13; p. 2].

Novak's engineer Costello submitted to DER a plan entitled, "Cross Sections of Fill Areas", which detailed proposed depth and final grade of the trenches, the volume of waste to be placed in each trench, and the boundaries of each trench, which boundaries were tied into a coordinate grid shown on the September 1982 topographic plan (revised January 1983) for final elevations in the trench fill section [606; 1046-1048; A-4, A-24].

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Costello's submission, "Cross Sections of Fill Trenches", described the final grades for the trench fill section (except for the interval between the area fill and the trench fill sections of the site) [480, 587-8; A-4].

Costello's submission, "Cross Sections of Fill Trenches", shows the southernmost portion of the trench fill section of the site proposed for active filling to be bounded by "Station 18", which is shown as the southern boundary of "trench 5" on the Costello topographic map [632-3; A-4, A-24].

By letter dated December 2, 1982, DER Solid Waste Operations Supervisor Bruce Beitler wrote to Novak approving excavation and fill to a depth of fifteen feet in "trench 5". The letter goes on to state, "This letter, along with our August 24 1982 letter, define remaining fill capacity at your landfill. It is the Department's understanding that final grading plans will now be developed and submitted." [A-13, A-14, A-24].

The "trench 1" through "trench 5" referred to in DER's August 24 and December 2, 1982 letters were the "trenches 1 through 5" shown in Costello's September 1982 topographic plan [469-471; A-13, A-14, A-24].

The scope of allowed filling in the Novak permit was determined, not by geology of the site, but boundaries shown in the approved permit plans, and by topography shown in those plans [476-480].

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From the time Costello submitted his calculations of overfilling on the area fill section in 1982 to DER, until at least the end of 1984, essentially the entire area fill portion of the site has exceeded the elevation limits set forth in Novak's approved permit plan [C-2; A-11].

Novak began landfilling in the trench fill section, in the second trench down from the junction with the area fill section, on August 30, 1982 [C-4].

From at least May 1982, continuing through a minimum of thirty DER inspections, until at least October 1984, large areas of the landfill lacked requisite vegetation [549, 554, 660-66, 700; C-4, C-5].

No factor existed which would have prevented Novak from vegetating the landfill properly between 1982 and 1984 [554].

From at least September 2, 1982, until at least September 20, 1984, continuing through a minimum of twenty-six DER inspections, areas of the landfill lacked requisite daily and/or final earth cover [694-5, 716-717; C-4, C-5].

Purposes of the use of cover on landfills include control of vectors, water infiltration, fires, erosion and odors [716].

On a number of occasions since February 1982, the landfill has caused odor problems; it has also had at least one uncontrolled discharge of storm water [536].

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From at least September 2, 1982 until at least November 1984, continuing through a minimum of twenty-seven DER inspections, areas of the landfill, most recently the west side of the trench fill section, have been inadequately graded and had excessively steep slopes [584, 587-88, 624, 627; C-4, C-5, A-4].

Inadequate vegetation and grading at the landfill have been, and are, an impediment to control of erosion and sedimentation [554, 610, 627].

From at least February 1984 through November 1984, Novak failed to implement the gas venting required by the landfill's approved permit plans in that not all gas vents were installed and those installed were often not in approved locations [584-585, 618-619, 671-675; A-24, C-4, C-5].

Louis Novak was convicted before a district justice of summary violation of the Solid Waste Management Act, in August 1984, by failing to implement the landfill's required gas management plant [105, 701].

Groundwater monitoring well 1-B is venting gas which Novak's consulting chemist describes as landfill methane gas [1074-5, 1190].

At least one of the installed gas vents, in the northwest corner of the third trench from the area fill - trench fill junction, is "dead"; i.e., it is not venting gas [1186; A-24].

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Since at least February 1982 the landfill has had erosion and sedimentation problems [493, C-4, C-5].

By letter dated February 1, 1983, DER Solid Waste Operations Supervisor Bruce Beitler requested that Novak submit to DER an erosion and sedimentation control plan for the landfill, including the trench fill section [A-8].

From 1982 through December 1984 Novak received written and oral notice from DER concerning the above violations and the need to correct them [500-593, 611, 660].

In early 1984, Novak engineer ~~Costello~~ submitted to DER a document entitled, "Sedimentation and Erosion Control Plan for Novak's Landfill" [A-9].

In a meeting at the landfill site in spring 1984, DER engineer Dinesh Rajkotia, who reviewed the plan, advised Cosetello orally that the submission was utterly inadequate to meet the criteria of 25 Pa. Code Chapter 102 [533, 609-610, 1065].

Costello orally agreed to submit a revised plan in light of Mr. Rajkotia's comments, but no new plan was submitted [610-612, 1065].

Among the features required for an adequate erosion and sedimentation control plan which are not included in Costello's January 1984 submission are:

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A. - A map showing:

1. Topographic features such as landmarks, contours, boundaries, project acreage, bodies of water, drainage area by true scale contour, potentially affected neighboring areas, map scale and compass orientation;
2. Soil depth and areal extent;
3. Proposed area alteration, including changes to land surface and cover, cut and fill area, structures and paved areas, storm water facilities, and finished contours; and

B. A narrative describing:

1. Runoff from the project and its watershed, including calculations by method used and values used for variables;
2. Earthmoving activity staging, including cover removal, improvement installation, control facility installation, and operational program;
3. The maintenance program for control facilities, including a disposal method for cleared materials, and a methodology and schedule for facility clearing activity;
4. Temporary control facilities to be used during earthmoving; and

C. A schedule for implementing the program, including tree clearing, temporary control installation, haul road

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construction, temporary drainage installation, conveyance channel construction, and embankment construction.

In addition, as Mr. Rajkotia had advised Costello, the submission of January 1984 used a runoff coefficient of 0.3, based on a vegetated site, rather than 0.6, which would reflect the many unvegetated portions of the landfill [610-611, 1065; A-9; C-19].

Mr. Rajkotia walked the site with Costello and Louis, and demonstrated with reference to physical features of the landfill what was expected in an adequate plan for erosion and sedimentation control before asking for a revised plan [1067-8].

Novak conducted blasting, without a permit, to excavate the third trench from the junction between the area and trench fill sections of the landfill [668-9].

Consistent with their previous track record on groundwater sampling, Novak failed to submit quarterly groundwater monitoring reports to DER at least three times in 1982, once in 1983, and once in 1984 [1039; C-19].

From at least December 1983 to December 1984, DER hydrogeologist Joseph Manduke requested both orally and in writing that Novak install two additional groundwater monitoring wells and perform a detailed hydrogeologic study [433, 448]

Six months passed between the last groundwater sample report from Novak to DER in 1983 and the first such report in 1984 [C-19].

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Five months passed between the second and third ground-water sample reports from Novak to DER in 1984 [145; C-19].

Six months passed between Novak's last 1984 groundwater sample report and first 1985 groundwater sample report to DER [C-19].

Between August 1982 and the spring of 1984, Novak excavated and filled four trenches in the trench fill section of the site [C-4].

In the spring of 1984, DER staff, concerned that Novak's landfilling activities were at their limits under the permit, held a meeting with Louis to explain their concerns [500-502].

In a meeting in the summer of 1984, DER representatives requested that no further excavation of trenches be done because of the need to ensure that the southern permit boundary of the trench fill section was not being exceeded; Novak then agreed to have an aerial topographic survey of the landfill submitted to DER, and to submit to DER a final closure plan for the site after the aerial survey was completed [502-503].

In November 1984, DER received from Novak's new consultants Satterthwaite Associates (SA) the requested aerial topographic survey and a report results of groundwater samples taken at the site on June 26, 1984 [503, A-11, A-6].

The June 1984 groundwater sample submitted in November 1984 showed the following contaminant levels, in micrograms per liter unless otherwise specified:

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<u>Parameter</u>	<u>Monitoring Well No. 1</u>	<u>Monitoring Well No. 2</u>
phenols		54
1,2 dichloroethane		48
toluene	12	53
1,1,1 trichloroethane		34
dichlorodifluoromethane	13	
vinyl chloride	14	
zinc	2,730	11,600
manganese	170	3,420
mercury		0.029
selenium	14.1	

Toluene, 1,2 dichloroethane and phenols are all common components of landfill leachate [251, 265, 373-4].

SA had purged the monitoring wells before taking the June 26, 1984 groundwater samples [272].

Novak landfill was issued a DER solid waste management permit for, and its design plans indicated the use of, "natural renovation" landfilling [11; A-1, A-2].

"Natural renovation" landfills do not employ collection and treatment of leachate as it is generated; rather, they depend percolation of leachate through a renovating layer of soil to remove contaminants before they reach the water table [120].

A critical factor in natural renovation landfilling is depth of soil down from waste to bedrock, particularly at a site such a Novak landfill whose permit was issued based on a one-to-one ratio of waste to underlying renovating soil [11, 121, A-1, A-1].

Volatile organic contaminants such as those which showed up in Novak monitoring wells 1 and 2 in the June 26, 1984

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sampling are not removed from leachate by the natural renovation process [254].

Despite the fact that in the spring of 1984 DER officials had met with Louis and advised him not to perform any excavation south of the fourth trench from the trench fill-area fill junction ("the southernmost filled trench"), because such excavation would exceed the lateral permit boundary, Novak caused an additional trench ("the excavation") to be excavated to the south [502; A-11].

On December 3, 1984, concerned that the landfill was overfull and that excessive trash was defeating the natural renovation process, thus contaminating groundwater with leachate, DER officials met with Louis and advised him to close the landf 11, which he refused to do [334-336].

Novak's consultant Walter Satterthwaite claimed that the "data base" for Novak's topographic survey and cross sections of the trench fill section, presented to DER with a date of October 4, 1984, was as of December 5, 1984 [215; A-11].

Satterthwaite admitted that as of the date on which the topographic cross section submitted to DER was made, the southernmost filled trench already contained two to three thousand cubic yards of excessive trash [215-A-11].

Louis confirmed that during the month of December 1984 the landfill took in trash five and three-quarter days per week

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at the rate of two hundred to two hundred fifty tons, or six hundred to seven hundred fifty cubic yards per day [327].

Landfilling took place on the site only at the southernmost filled trench between December 5 and December 17, 1985 [216].

At a minimum, using Louis' stated rate of trash deposition, in December 1984, the southernmost filled trench received between 5,100 and 6,250 extra cubic yards of trash in addition to the two to three thousand yards of overfill estimated by Satterthwaite [215-215, 327; A-11].

On December 17, 1984, Novak submitted to DER the results of the first groundwater sampling it had conducted at the site since June 1984. Those results showed the following contaminants in the listed concentrations, stated in micrograms per liter unless otherwise specified:

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<u>Parameter</u>	<u>Monitoring Well No. 1</u>	<u>Monitoring Well No. 2</u>
Alkalinity	862,000	504,000
Total iron	7,150	3,550
Sulfates		43,000
Total solids	1,820,000	815,000
Chlorides	414,000	18,000
Specific conductance (microhmos)	2,500	908
Chemical Oxygen Demand	161,000	25,000
5-day Biological Oxygen Demand	19,100	
Benzene	8.8	
Chlorobenzene	12	
1,1-dichloroethane	14	25
trans-1,2-dichloroethane	52	43
Ethylbenzene	48	
Toluene	11	
Vinyl chloride	19	

[A-7]

Satterthwaite stated that the parameters showing up in the December 1984 results from groundwater sampling of monitoring wells 1 and 2 were indicators of leachate contamination [152].

By Order dated December 13, 1984, based on the Solid Waste Management Act of 1980, the Clean Streams Law, the Administrative Code, and regulations promulgated under those statutes, DER shut down the landfill effective December 17, 1984.

The Order required Novak to perform a hydrogeologic study, cover, grade, seed and otherwise stabilize the landfill in accordance with the requirements of the permit and 25 Pa. Code Chapter 75, implement erosion and sedimentation controls, and post a \$300,000.00 bond for the site under the Solid Waste Management Act.

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The Order, signed by DER Norristown Regional Solid Waste Manager Wayne Lynn, was drafted by DER Solid Waste Operations Supervisor Bruce Beitler, in consultation engineer Dinesh Rajkotia, solid waste specialist Michael Maiolie and his supervisor Joseph Pomponi, solid waste compliance specialist Gary Bonner, Norristown Regional Director Leon Gonshor, and hydrogeologist Joseph Manduke [496].

The Environmental Hearing Board held supersedeas hearings concerning Novak's appeal from the Order in December 1984 and January 1985, and held further hearings in April and September 1985, in addition to making at least two visits to the site in 1985.

The southerly excavation in the trench fill section extends within a two hundred foot offset from the landfill's southern property line as established by Novak's surveyors, in violation of the offset shown on Novak's approved permit plan [S-1; A-2].

The southernmost filled trench, while within the area permitted for trench filling, occupies the sections labeled "Trench 4" and "Trench 5" in the permit, as shown on the 1972 and 1982 permit plans both by contours and by coordinates [502, 575, 587-590, 614-617, 1133-1134; A-2, A-11, A-24; C-3].

The southerly excavation extends beyond the limit of "trench 5" on the permit by a minimum of ten feet on one end and

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at least one hundred fifty feet on the other end [635-636, 1134-1135; A-2, A-11, A-24, C-3].

The only witnesses in the hearings who have personally field verified and measured location and size of the southerly excavation and of the filled trenches are DER's Michael Maiolie and Dinesh Rajkotia [573-574, 579-580, 594-595, 618-619, 675-677].

The actual filled trenches are much larger, as measured both by elevation and long dimension (east-west) than are shown in Novak's submission to DER, which is a broad-scale aerial topographic map [675-678, 1120; A-11, C-3].

The change in Novak's permit to accommodate a gas venting plan and to specify final contours in the trench fill section was accomplished by a September 1982 permit amendment; the permit was not subsequently amended [1041; C-18, A-2, A-24].

Novak's consultant Satterthwaite testified that closure and postclosure costs for the site would reach the amount set by DER in the bonding portion of its Order, not including completion of the gas venting system, purchase of soil sufficient to meet final cover needs, any future costs of abating groundwater pollution, or establishment of a contingency fund for the site [732-736].

Novak Landfill is underlain by a limestone carbonate bedrock whose depth beneath the soil is extremely variable,

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ranging to bedrock exposures in the second trench and bedrock outcrops elsewhere (i.e., no soil covering) [98, 121, 122, 395, 401-402, 440, A-5-a Section 2(D)].

Soil depth at the site can vary by as much as fifteen feet between two points within a few feet of each other [98, 401-402].

The site bedrock is essentially calcium carbonate, which is: highly susceptible to fracturing and planing; easily "solutioned" in acids such as leachate or rainfall, which is normally acidic; prone to sinkhole formation, in which pockets of bedrock dissolve to form voids into which surface soils collapse; susceptible to irregular transmission of groundwater from one portion of a rock bed to another [379, 380, 382, 403, 794, 989, 993; A-5-a].

Monitoring well drillers encountered voids or 'vugs' in the bedrock of the site. Voids and vugs are holes in bedrock formed by solutioning, the dissolving of carbonate bedrock by an acidic liquid [952-954].

Bedrock, boulders and loose rock do not renovate (chemically clean) leachate [237].

Boulders weathered from bedrock, and bedrock outcrops, occurred both at the surface and just below the surface of the second and third trenches from the trench fill-area fill junction [126, 127, 391, 658-660, 668, 721; A-2, A-5-a].

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DER representatives had warned Novak that filling should be restricted in the vicinity of a bedrock outcrop in the middle of the third trench from the trench fill-area fill junction, but Novak nevertheless covered it with refuse [658-660].

The topography of the site runs from uphill in the north to downhill in the south, but the dominant flow of water in the bedrock over the broad range of the area is against the topography, toward the northeast [38, 403-405; A-5-a].

Monitoring well 1 was located across a former access road from, and to the west of, the trench fill section of the site [A-2].

Because Novak had not constructed them properly, DER approved Novak's request to abandon and seal monitoring wells 1 and 2 [786].

Monitoring wells 5 and 6 were not installed at the site until November 1984 [A-5-b].

After monitoring well 1 was replaced by nearby monitoring well 1-A in spring 1985, Novak representatives claimed that 1-A was defectively constructed also, and they obtained DER's approval to abandon 1-A [1162, 1206].

After monitoring well 1-A was replaced in spring 1985 by monitoring well 1-B, which was close to wells 1 and 1-A west of the trench fill section [1005, 1077].

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Monitoring well 1-B, since at least July 1985, has been emitting a gas which is either explosive at the wellhead or is concentrated above the upper explosive limit at the wellhead and is explosive somewhere beyond that point [952, 960, 1074-1075].

DER and Novak representatives agree that the gas in well 1-B is probably methane formed by the decomposition of landfill wastes [1076-1077, 1190].

The gas is getting into 1-B through the bottom of, or a break in, the well casing [1078].

If a metal sampling bucket struck a rock while being lowered into 1-B, the resulting spark could easily trigger an explosion [1080].

Although well 1-B yielded adequate water to sample in May 1985, in July 1985 it only had 0.75 feet of liquid in it, an inadequate yield for sampling purposes [951, 1011, 1022, 1085].

Well 1-B is not deep enough to be ten feet into the water table continuously year-round [1009-1010].

All three monitoring wells 1, 1-A and 1-B, have consistently shown groundwater pollution by volatile organic contaminants, as well as inorganic parameters, which are consistent with landfill leachate [150-151, 152, 164, 166-167, 242-272, 1005, 1220].

Surface water samples taken at the site were essentially clean of volatile organic contaminants [1005; C-10, C-11].

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Some time between late January and February 1985, sinkholes four feet in depth and approximately three feet by two feet in area formed in a sedimentation basin in the southwest portion of the landfill [787-794; C-7].

When sinkholes form in an area of active natural renovation landfilling, they short-circuit the renovation process, because the soil needed to renovate leachate collapses into the sinkhole, thus bringing the waste closer to bedrock and the water table. This is especially a problem in sites, such as Novak landfill, in which bedrock depth variability and the occurrence of boulders or loose rock impair renovative capacity [796, 829-830].

Sinkholes can in fact have already formed in the active trench fill portion of the site, and even a small hole that would have gone unnoticed in the process of filling and covering could channel leachate into bedrock [795-796, 824-826, 832].

A test pit showing no evidence of sinkhole-proneness in one portion of the site would not indicate freedom from sinkhole formation as close as forty feet away; thus, the test pit performed forty feet from the western edge, and sixty feet from the eastern edge, of the southerly excavation does not address the risk of sinkhole formation at either end of that excavation [829-830, 852-853].

Besides groundwater contamination and lack of a bond, the landfill has the following problems: lack of vegetation over

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the majority of the site; large areas lacking adequate final cover or any cover; an incomplete gas venting system; excessive slopes; grades that do not comply with the permit or regulations; hundreds of thousands of cubic yards of excessive fill, in the area fill section, in the southernmost filled trench, and on the access road; lack of erosion and sedimentation controls, effective storm water management controls, or detailed plans for either type of control; provision for site security from unauthorized entry; inadequate volume of soil to provide two feet of final cover over the inadequately covered portions of the site; lack of a detailed closure plan, tied into the existing permit plan by coordinates and benchmarks; and a large excavation beyond the area permitted for fill in the approved plans, which excavation also violates the two-hundred-foot setback from the southern property line shown in the approved plans [548-549, 1050-1062; S-1, A-2, A-4, A-24].

B. DISCUSSION

I. Procedural History

This is an appeal to the Environmental Hearing Board (the Board) by Louis Novak, Sr., Hilda Novak, Louis and Hilda as husband and wife, and Novak Sanitary Landfill, Inc. (collectively, Novak) from an Order issued December 13, 1984 to Novak by the Commonwealth Department of Environmental Resources (DER) concerning Novak's operation of the municipal waste

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disposal facility known as Novak landfill (the landfill). The Order halted disposal of waste at the site, required the posting of a Solid Waste Management closure-postclosure bond, mandated performance of a hydrogeologic study, and directed Novak to abate violations of the landfill permit and of 25 Pa. Code Chapter 75 respecting, inter alia, storm water and erosion and sedimentation control, grading, covering, gas management, and vegetation.

Novak petitioned the Board for a supersedeas of the Order, and hearings were held on the petition in December 1984 and January 1985. Although the Board issued no formal denial either to the 1984 petition or Novak's second such petition in late 1985, neither did it grant the petitions.² The parties accompanied the Examiner on at least two visits to the landfill, and hearings on the merits were held in April and September 1985.

II. Scope of Review

The Board's responsibility when reviewing Orders issued by DER is to determine whether or not such issuance was arbitrary or a manifest abuse of discretion. Warren Sand and Gravel Company, Inc. v. DER, 20 Comwlth. 186, 341 A.2d 556 (1975); Strasburg Associates v. DER, 1984 EHB 423, and cases cited therein.

²DER respectfully requests that written Orders issue concerning supersedeas petition denials. Such Orders are useful not only to the parties but also to future litigants.

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III. Analysis

a) DER's Battle to Bring Novak Landfill into Compliance with Legal Requirements

When DER's Norristown Regional Solid Waste Management staff assumed responsibility for regulating Novak Landfill in early 1982, they conducted an analysis of the site respecting engineering, hydrogeology, soils and general compliance with regulatory and permit requirements. Worried at what they found, they held a series of meetings at the site with Louis and with Novak engineer C.A. Costello. They pointed out that the "area fill" portion of the site, on which Novak had been filling under the permit, appeared to be over height and grade [328]. Costello submitted to DER calculations confirming this fact; over six hundred twenty-five thousand more cubic yards of trash than the permit allowed had been jammed into the area fill section of the site. DER staff advised Novak to stop filling immediately on the area fill portion of the site, and to submit to DER a proposed final topographic contour plan for the trench fill portion, adjusting the slope at the junction between the overfill area fill section and the trench fill section. Novak was further advised that the site lacked adequate gas management and a plan for gas management and that such a plan should be submitted and implemented.³ Finally, Novak was confronted with the lack of

³See 25 Pa. Code § 75.24(e)(xxiv).

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vegetation, cover, erosion and sedimentation control, and slope maintenance at the site; more than half the area fill portion of the site was unvegetated, for example, and large portions lacked required earth cover altogether. The overfill, in addition to violating the permit, was prohibited by 25 Pa. Code § 75.21(e); the other violations were proscribed by §§ 75.26(p), 75.26(n), 75.24(c)(1)(v) and 75.26(o).

Although Novak did shift from the area fill to the trench fill section of the site, the other violations were not corrected. Furthermore, in 1982 Novak submitted only one of the four required sets of sample results from groundwater monitoring wells, in violation of 25 Pa. Code § 75.24(b)(4)(i).

Finally, in September 1982 Novak submitted the requested gas venting plan and the proposed final contour plan for the trench fill. That same month DER amended Novak's Solid Waste Management permit to incorporate the two plans. The limits of the trench fill section were set by reference to utility poles of Pennsylvania Power and Light Company (PP&L), which had been listed in Novak's original 1972 permit plan as benchmarks, and which were the only permanent on-site reference points, as well as by reference to topography.

During 1982, 1983 and 1984, Novak's operational violations continued unabated. It was not for want of notice from DER; Solid Waste Specialist Michael Maiolie personally handed written Notices of Violation to Louis, and various members of the

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Solid Waste Management Staff met with Costello and Louis on the site to point out problems and request abatement. During the 1982-1984 timespan, the site caused numerous odor problems, had an uncontrolled storm water discharge, and suffered generally from the lacks specified above. In fact, in August 1984 DER resorted to summary criminal action against Louis to attempt to force compliance, and, as Novak's consultant and counsel stated for the record, Louis was convicted by the district justice of failure to implement gas management at the site.

In January 1984, Costello responded on Novak's behalf to a written request dated February 1, 1983 from DER Solid Waste Operations Supervisor Bruce Beitler to submit a plan for erosion and sedimentation control as required by 25 Pa. Code Chapter 102. The document submitted was woefully inadequate that DER's engineer Dinesh Rajkotia walked the site with Costello and Louis and pointed out the problems himself.⁴ In addition, Mr. Rajkotia advised them that he would expect the plan to be resubmitted with the deficiencies remedied, and would therefore not waste the time to send them a written review of the plan reiterating the comments he had already given orally. Novak never caused the resubmission to be made.

⁴The Board's attention is respectfully called to the list of omissions set forth in the Findings of Fact, supra, and the requirements of 25 Pa. Code § 102.5. The scope of deficiencies in the Costello plan is so broad, it is suprising that Novak will even acknowledge it.

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As both Mr. Maiolie and Mr. Beitler testified, although Louis was not verbally resistant to the suggestions and admonitions of DER representatives, he failed to take effective action in response [555, 702]. Then, late in 1984, Novak, having expended all remaining permitted fill capacity at the site, excavated another trench, beyond the area designated for active landfilling in the approved permit plans. Simultaneously, at least six months after the last round had been submitted, Novak finally presented to DER--in November 1984--the results of groundwater monitoring samples taken in June 1984 [A-6]. That sample, taken after repeated purgings of the wells, showed substantial contamination with both volatile organic compounds, such as toluene and 1,2 dichlorethane, and inorganic parameters, such as zinc and highly toxic mercury. These parameters are commonly found in municipal landfill leachate; their presence in the groundwater below two of the monitoring wells demonstrated that the landfill was polluting groundwater.

DER staff met with Louis to persuade him to cease operations in light of the fact that Novak's permitted fill capacity was exhausted and in light of the groundwater contamination problem. Dropping even the pretense of cooperation, Louis stormed that DER would have to Order him to shut down before he would stop operating [335].

Ten days later DER issued the Order under appeal.

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b) Novak's Land Grab

The record is replete with evidence that Novak massively overfilled the area fill portion of the site, and would have continued to do so had DER not figuratively planted itself in front of the bulldozer and pointed to the trench fill section. The original permit plan for the site, and that same plan as adjusted in 1978, are not marked by a grid of coordinates; rather, they show an area for trench filling, and they state that PP&L poles are to be used as benchmarks [A-2; 575-576]. The plan also showed a minimum offset from the southern property boundary of two hundred feet to active filling. ~~The southernmost~~ boundary of the southernmost trench shown in the original plan is approximately seventy-five feet from an east-west line drawn through PP&L pole No. 10 [180, 571]. Such a line would bisect the southernmost trench into one-third and two thirds portions.

In 1982, DER staff met with Novak representatives to advise them that final topographic contours and cross sections were needed for the fill portion of the site. After a series of discussions between DER and Novak, plans were submitted both for final contours of the trench fill section and for gas venting, and the permit was amended to reflect those plans [A-28]. Those 1982 plans also show the southern boundary line of filling to be about seventy-five feet south of an east-west line drawn through PP&L pole No. 10. Again, such an east-west line would divide the southernmost trench into sections of one-third and two-thirds of the entire trench [182-183; 573].

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There are two other methods by which the boundary of filling is set forth in the 1982 permit plan [A-24, A-4]. The first is a set of coordinate station markings;⁵ the southern boundary of the southernmost trench is located along "Station 18+00/ Reference to the only benchmark on the plan--the PP&L poles--leaves no doubt as to where the southernmost limit of trench filling is on the plans--seventy-five feet away from an east-west line drawn through PP&L pole No. 10.⁶ The second method by which the southern bound of fill is delimited is topography. As DER staff testified, the final contours approved for the trenches in the 1982 Costello plan do not occur in a vacuum; they are related to the surrounding topography, and the location of the trenches is depicted as blending in with contours at the edge of the trench fill section. Those contours coincide with the ones depicted in the 1972 permit plan, as DER staff testified [479, 587-588, 633].

The Board has heard the DER representatives who worked with Novak on the 1982 permit amendments testify that what they

⁵25 Pa. Code § 75.24(c)(1)(xi) and (xii) were in effect, requiring grid coordinate markings for fill boundaries, when the permit amendment was approved.

⁶It is noteworthy that, on the stand, neither of Novak's consultants, Satterthwaite or Gary Emmanuel, could locate this pole -- which is specified as a benchmark on the original permit -- on any plan in evidence at the hearing, without reference to outside sources [179-183, 1150]. By way of contrast, DER witnesses Rajkotia and Maiolie had field verified the locations about which they testified [573, 675-676].

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reviewed with Novak's engineer Costello and with Louis, and what they actually approved, was a plan showing the southern limit of trench filling at Station 18+00, seventy-five feet from a parallel drawn through PP&L pole No. 10 [500-501, 587-608, 1045-1046]. DER sent correspondence to Novak, confirming that the approved plan spelled out the limits of filling at Novak Landfill [A-13, A-14]. What the Board has not heard is any testimony from Louis that there was a contrary understanding or agreement. Perhaps most significant, what the Board has not heard is any testimony whatsoever from Costello. If he had intended to alter the area of active fill from that shown in the 1972 plan, if he had intended the topography and coordinate stations on the 1982 mean other than what they plainly show on their face, other than that which DER staff testified that they meant, Novak would have produced Costello to explain. But the only record before the Board compels the conclusion that the southernmost limit of active trench filling is Station 18+00, at a given distance from an east-west line through PP&L pole No. 10 in a given position relative to the topography of the trench fill portion of the site [1041].

Novak began trench filling, within what was clearly the area for active fill, in 1982. He spread four trenches over the active fill area which had been shown in all plans as intended to accommodate five, widening considerably the spaces between the trenches. No environmental benefit was derived by increasing the separation of the trenches beyond what Novak had originally

proposed [522]; however, in itself no great detriment occurred either, so as long as Novak stayed within the permitted active fill area, DER staff did not raise the issue of the wider spacing. If Novak and Costello wanted to consume potentially fillable space with wider separation, that was their concern; it was their responsibility to see to it that the on-site operation conformed to its permit both in terms of lateral bounds and elevations, and DER, consistent with standard practice, did not at that time survey, measure or approve actual trench excavations for conformity with the approved plan respecting trench location [513]. As the Examiner so aptly remarked, "I don't know that it is the Department's burden to say you have to put [the trenches] where you planned to put them. I think the converse is true. The burden is upon the operator to put those areas of fill where he told the Department he was going to put them" [768-769].

There is no dispute that Novak did not in fact put fill trenches where the permit submissions said they were going to be put. The southernmost filled trench--the fourth trench down from the area fill-trench fill junction--occupies portions of what is shown in the approved plans as trenches four and five and the space in between. As Novak's consultant Gary Emmanuel testified, the southernmost filled trench overlaps into what is shown as trench five in the approved permit plans by a range of forty-five to thirty-five feet in a southward direction [1133-1134]. The fifth, southernmost excavation, in its turn, extends beyond the southern boundary of active fill shown on the approved plans by

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as much as one hundred fifty feet, as Emmanuel confirmed [1134-1135].

In this context, Satterthwaite's bland assurance to the Board that the site complied with "the Costello plan" proves meaningless. Satterthwaite turned out to be referring to cross sections and grades [189; A-4]. He had never even looked at the approved topographic plan, which related directly to the cross-section plan about which he had been talking, before the day of his testimony [175, 193; A-24]. And of course, Satterthwaite was dead wrong about even the cross-section plan; the elevations of the southernmost filled trench were exceeded by many feet in depth, and thousands of cubic yards in volume, of trash [1914, 215, 216, 327; A-30]. Finally, Satterthwaite's blithe assertion that building to his proposed specifications would ensure a two-hundred-foot setback from adjoining property owners, made without benefit of a survey, was entirely incorrect [60, 185]. Employing Novak's surveyors' locations for the southern property line and a two-hundred-foot setback therefrom, DER surveyors demonstrated that part of the southern excavation fell within the two hundred foot buffer zone, and that so did a portion of the area Novak had cleared of vegetation in anticipation of yet further unlawful trenching [S-1].

However the permit limits are measured,⁷ Novak has indisputably excavated beyond them laterally and filled above them vertically. These violations of the permit constitute unlawful conduct per se under the Solid Waste Management Act of 1980 (the Act). 35 P.S. § 6018.610(2) and (9). Novak's permit is limited by its approved plans, as Bruce Beitler testified in response to the Examiner's question [476-477]. Those plans are not up for negotiation in the instant proceedings. The issue is not whether it might not have been a better idea for Novak to have drawn up in some different way the plans that DER approved. This is not an appeal from denial of a permit amendment; ~~it is a challenge to DER's insistence that a permittee live up to all of its representations of where landfilling would stop.~~ Novak's previous record has demonstrated that the filling will continue, regardless of permit limits, until DER puts a halt to it. Witness the area fill; witness the overfilling on the southernmost filled trench.⁸ Small wonder, then, that Louis' counsel characterizes insistence on compliance with the boundaries set forth in approved plans as "esoteric, bureaucratic gobbledegook" [767]. Here is a "legal" argument that all too aptly represents

⁷Michael Maiolie and Dinesh Rajkotia have testified about, and demonstrated to the Board by drawing on a copy of Novak's topographic survey, the manner in which existing topography, field verified by careful measurement, differs from that shown in the survey, and the great extent to which both the survey and actual topography differ from that allowed in the approved permit plans [595-608, 675-676; A-11].

⁸Careful attention should also be given to the fact that Novak has misrepresented the contours, configurations and size of the existing trenches. As was explained by Michael Maiolie, who carefully field verified and measured the actual trenches, the contours shown on Novak's topographic survey are inconsistent

the position of the litigant. In action, Novak has not manifested the slightest intention of adhering to the restrictions built by law into Novak's solid waste permit.

DER has demonstrated environmental harm resulting from Novak's operational violations, such as odor problems, discharge of storm water offsite, and accelerated erosion. Nevertheless, DER should not have to make such showings to prevail when an enforcement Order is appealed. The very violation of the prophylactic provisions DER enforces, which violation is in itself unlawful, suffices to demonstrate the non-arbitrariness of the enforcement. ~~The public should not be forced to accept~~ actual harm to its resources before the Board will uphold DER's enforcement of regulations and permit conditions designed to prevent that harm. Novak landfill is full, more than full, as respects the limits set forth in its permit. DER insists that Novak adhere to the commitments made in the permit.

with what exists in the field; the actual trenches are much bigger. Similarly, Novak's survey shows the ends of the trenches as coinciding with the position of gas vents. In fact, as Mr. Maiolie testified, the trenches extend considerably beyond where the gas vents are placed. DER's survey map, S-1, gives an accurate picture Novak's of the size and shape of the trenches, excavated and filled [675-677; S-1, A-11].

c) Contamination of Underground
Water

"Underground water" is included in the definition of "waters of the Commonwealth" set forth in Section One of the Clean Streams Law, 35 P.S. § 691.1 (CSL). Louis and Hilda, as officers and directors of Novak Sanitary Landfill Inc., and Louis as primary operator of the site, are "persons" liable to protect that underground water both under the CSL and the Act; furthermore, as owners of the site, they have a duty pursuant to Section 316 of the CSL, 35 P.S. § 691.316, to protect that water from conditions which are polluting or creating a danger of polluting it.

Novak have failed in that duty. Despite all of the efforts of Novak's consultants to explain them away, leachate parameters keep appearing in the first two monitoring wells. Satterthwaite first tried to attribute the contamination shown in wells 1 and 2 in the June and November 1984 round of groundwater samples to surface water run-in, although he had never sampled such surface water; when he did so, it showed up essentially free of the organic and inorganic contaminants found in the wells [155-156, 242, 1005; A-6, A-7, C-8 through C-11].

Notwithstanding general agreement that the dominant groundwater flow on the site is north-northeast, Satterthwaite then claimed that well 1, which is to the west of the trench fill and south of the area fill (i.e., upgradient of both fill

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portions) was picking up unrenovated leachate from filled areas through perforations in the well casings [155-156, 167; C-1]. Of course, from the legal standpoint, it is immaterial whether a slug of unrenovated leachate entered the groundwater from the fill mass or from the sides of the well casing; the groundwater itself is now contaminated, as was demonstrated by the fact that, as Satterthwaite admits, the wells had been properly purged before sampling and the substance which was sampled was groundwater [164, 272]. It is just as unlawful for Novak's monitoring wells to be funnelling pollutants into groundwater as it is for the landfill to be discharging leachate directly into groundwater. Nevertheless, Satterthwaite's claim raises an interesting question. Well 1 is located upgradient from, not in, any filled portion of the site. Where was the unrenovated leachate he claims to have been leaking through the casing coming from? As the Examiner alertly noted, the predominant factor in fluid movement in the unconsolidated zone is gravity, flow toward the center of the earth [456]. As DER hydrogeologist Manduke agreed, flow in the unconsolidated zone would not move uphill (i.e., from the trench fill toward well 1) [406]. It would be controlled by gravity. If leachate was reaching well 1 from as far away as the area fill, then the renovating soils were patently failing to do their job. Finally, Satterthwaite has made no tests of liquids in the unconsolidated "shallow" zone above bedrock, and thus his theory is speculative [158].

Satterthwaite had demonstrated, however, that Novak had installed well 1 improperly, and obtained DER's consent to seal

and replace it. The nearby replacement showed up contaminated and was hurriedly abandoned as faultily constructed. [981-988, 1162]. The second nearby replacement, well 1-B, has shown up contaminated as well, and in addition is venting an explosive gas which both DER and Novak believe to be landfill-generated methane gas.

Novak presented an industrial chemist, with no background or expertise in soil science or hydrogeology, to testify concerning contamination by volatile organics of the groundwater in well 1-B [1203-1204]. His theory is that landfill gas containing some volatile organic contaminants is dissolving in the well 1-B water.⁹ The standing water in the well of course was purged before the well was sampled, however [1086]. Neither the chemist nor Satterthwaite offered any explanation as to how the gas is getting into the well in the first place: is there a crack in the casing? Is landfill gas entering the bedrock and bubbling up through the groundwater? Nor do they explain how elevated levels of pollutant parameters, standard leachate indicators which are not volatile organic compounds, have shown up in the samples from 1-B: chemical oxygen demand, chlorides, specific conductance, nitrogen, phenols, dissolved solids, sulfate, total organic carbon [1215: C-8].

The only plausible explanation for the sample results is that propounded by DER hydrogeologist Robert Day-Lewis, a man of

⁹The chemist attempted to attribute contamination showing up in one offsite well to a gasoline pipeline fifteen hundred feet away from that well, notwithstanding that he had no evidence

extensive experience and education in the field¹⁰ [C-16]. The groundwater in the vicinity of well 1, in its three incarnations, is contaminated with leachate from the Novak landfill. Perhaps that contamination is entirely the result of bedrock transmission of leachate; perhaps a portion of the contamination entered the groundwater from the unconsolidated shallow zone via the monitoring wells. The pollution is there now, however, and it comes from the landfill, even if some of the pollution is the gaseous, rather than liquid, product of the decomposition of solid waste [1005, 1214-1216, 1220-1221]. The polluting condition exists upon Louis and Hilda's land, and exists as a result of the Novak operation. DER was entirely justified in ordering Novak to investigate and abate the pollution.¹¹

that the pipeline had ever leaked [1171-1171, 1174-1175, 1214]. Similarly, he attempted to assert that the "old house new well" was showing TCE contamination as a result of degreaser use in a nearby cesspool, again having done no tests on the cesspool and being possessed of no evidence that TCE had ever been used there [1183-1185]. The scientific term for this methodology is "wild speculation".

¹⁰Mr. Day-Lewis' opinion testimony was given to a reasonable hydrogeologic certainty. Cf. Satterthwaite's speculative answers [52, 1214].

¹¹There is still much to do in pursuit of that investigation. Although well 1-B was yielding water adequate to take samples in spring 1985, by summer it was essentially dry. That means 1-B is not installed the regulatorily required ten feet into the water table, and will either have to be drilled deeper or replaced.

d) The Bond Requirement

Section 505(a) of the Act, 35 P.S. § 6018.505(a), requires that operators of municipal waste disposal facilities post a bond "for the land affected by such facility ... conditioned so the operator shall comply with the requirements of this act, [the Clean Streams Law, the Surface Mining Conservation and Reclamation Act, the Air Pollution Control Act, and the Dam Safety and Encroachment Act]." In addition to acting as a deterrent to water pollution by landfills, the bond ensures compliance with requirements such as topsoil conservation, dust and odor control, site security, vector control, fire prevention, and myriad other non-water related functions.

Novak's permit was amended in 1982, after the effective date of the Act's bonding requirement. Novak should be required to post a bond in an amount based on what it would cost the Commonwealth to accomplish site closure and postclosure maintenance, monitoring, and remedial measures. The testimony of Novak's own consultant Satterthwaite demonstrates that if anything, the bond amount DER set might be too low.

Satterthwaite's figures matched those in the Order, without taking into consideration purchase of adequate cover soils, completion of the gas venting system (including replacement of the pipe found by Novak's other consultant to be out of operation [1186]), any water pollution abatement costs, or provision of a contingency fund [732-746]. In light of existing groundwater

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contamination and the threat of additional contamination from mine fill area leachate, as Satterthwaite testified [49], the bond should be required to be posted for the full ten years after the site is certified closed.

IV. Conclusion

DER has proven the many violations cited in the findings of fact in its Order of December 13, 1984. Novak has failed to carry the burden of demonstrating that the relief Ordered is arbitrary or a manifest abuse of discretion. There are seven paragraphs of relief ordered. Novak no longer challenges the requirements to bring the site into physical compliance respecting matters such as grading, vegetating and implementation of erosion and sedimentation controls; submit and implement a final closure plan; submit groundwater monitoring results; and propose and carry out a hydrogeologic study, set forth in Paragraphs 2, 3, 4, 5 and 6 of the Order.¹² DER representatives Beitler, Rajkotia and Day-Lewis have testified as to what needs to be done to carry out these obligations [548, 1050-1061, 1023-1024, 1220, 1223; C-19].

Paragraphs 1 and 7 remain in dispute. The need for the bond by Paragraph 7 and Section 505(a) of the Act has been discussed supra. The only relief remaining for the Board to consider is the prohibition on additional waste disposal at the site set forth in Paragraph 1.

¹²That is not to say, however, that Novak has carried out these obligations as is required by 35 P.S. § 6018.603. It is

There is no place left within the limits of the approved permit plans to put any waste. DER staff, who reviewed and enforced the permit, are unanimous on that point; Novak Landfill was shut down only when it reached permitted capacity (indeed, calculating by cubic yardage of waste accepted throughout the site, it is well over capacity. [C-2]).

In addition, DER hydrogeologist Robert Day-Lewis has demonstrated that additional filling is environmentally inadvisable [1023-1024]. However, DER has already shown what it needed to show in these proceedings that the physical requirements of the permit were not met. Novak should not be allowed to evade the permit amendment process, which would include a review of compliance history pursuant to Section 503 of the Act, 35 P.S. § 6018.503, by rewriting the permit in the context of an appeal to enforce that Order. Whether or not a different permit would have been a good idea if Novak had thought to apply for it years ago is not the issue. Whether DER would amend Novak's permit to include the proposed changes if Novak made an amendment application is not the issue. The issue is, when DER insists on compliance with a permit it issued, will that insistence be undercut?

characteristic of the approach Novak took to the operation of the site that Satterthwaite proposed to add even more waste to the incredibly overfill area fill section, allegedly to fill in depressions [730]. DER's Bruce Beitler more sensibly suggests that some of the overfill be graded down to fill in any gaps. In that way Novak will not profit doubly from the unlawful activity. [749-750].

More is at stake here than disposal of additional waste on this particular site. DER, in its comprehensive management of solid waste, is charged with issuing permits for and regulating waste disposal sites. The power to issue permits will be substantially impaired if the public do not have faith in DER's capacity to enforce those permits, to regulate. Public resistance to DER solid waste permit issuance, already high, is inflamed when DER enforcement actions against overfull sites are trammelled by the "a little more can't hurt" philosophy. Appeals of enforcement orders are not arenas for rewriting, but enforcing, permits. The public has a right to no less.

C. CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties and over this appeal.

2. DER has proved the violations of the Clean Streams Law and the Solid Waste Management Act of 1980 alleged in its December 13, 1984 Order to Novak, including operational violations such as improper grading, lack of adequate cover, vegetation, stormwater and erosion control, and landfill gas management; pollution of waters of the Commonwealth as a result of conditions existing at Novak Landfill; and violations of fulfilling boundaries set forth in its Solid Waste Permit No. 100534.

3. Novak has failed to carry its burden of demonstrating that the relief Ordered by DER in response to

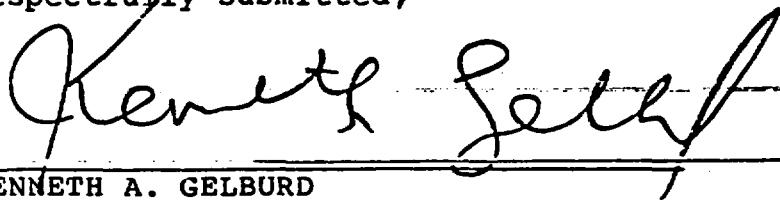
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these proven violations was arbitrary or a manifest abuse of discretion. Swatara Contractors, Inc. v. DER, 1982 EHB 75.

4. DER properly required posting of a \$300,000.00 bond for the site pursuant to Section 505(b) of the Solid Waste Management Act of 1980, 35 P.S. § 6018.505(a).

5. Novak's appeal is dismissed.

Respectfully submitted,



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DATE: November 13, 1985

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201160

COMMONWEALTH OF PENNSYLVANIA
Before The
ENVIRONMENTAL HEARING BOARD

In the Matter of:

LOUIS J. NOVAK, et al

v.

PENNSYLVANIA DEPARTMENT OF
ENVIRONMENTAL RESOURCES

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DOCKET NO. 84-425-M

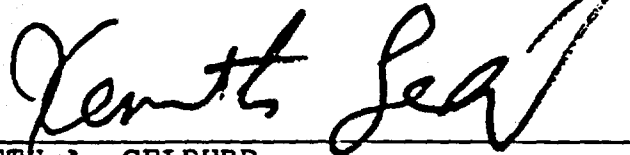
CERTIFICATE OF SERVICE

The foregoing Post-Hearing Memorandum is being served by
first class mail upon the below listed counsel:

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Karess & Reich
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Michael J. Sheridan, Esquire
Fox, Differ, Callahan, Ulrich
and O'Hara
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Respectfully submitted,



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Novak Landfill
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RECEIVED
NORRISTOWN

JAN 31 1986

January 30, 1986

Honorable Anthony Mazullo
Environmental Hearing Board
221 North Second Street
Third Floor
Harrisburg, PA 17101

Re: Novak vs. DER
No. 84-425-M

Dear Judge Mazullo:

Enclosed is an original and two copies of a Petition for Supersedeas.
It would be appreciated if you would give this matter your immediate attention.

Very truly yours,


MICHAEL J. SHERIDAN

MJS:mb

Enclosure

cc: Bureau of Litigation
Mr. Wayne L. Lynn
Kenneth A. Gelburd

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NORRISTOWN

JAN 31 1986

ENVIRONMENTAL HEARING BOARD
Third Floor
221 North Second Street
Harrisburg, Pennsylvania 17101

LOUIS J. NOVAK, SR., : DOCKET NO. 84-425-M
HILDA NOVAK, :
NOVAK SANITARY LANDFILL, INC. :
VS. :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL RESOURCES: :
APPELLEE :

PETITION FOR SUPERSEDEAS

AND NOW comes the Appellants through their attorneys, Fox, Differ, Callahan, Ulrich & O'Hara, Esquires, and respectfully petition for supersedeas staying enforcement of the below described Order as follows:

1. Appellants are Louis J. Novak, Sr., Hilda Novak and Novak Sanitary Landfill, Inc. The address of Appellants is R. D. 1, Box 268, Allentown, Pennsylvania 18104.
2. On December 13, 1984, Wayne L. Lynn, Regional Solid Waste Manager of the Department of Environmental Resources issued an Order directed against Appellants. The Order was served on Appellants on December 14, 1984. A copy of the Order is attached hereto.
3. Pursuant to the Order, operations at the landfill ceased on December 17, 1984. Since that time, the landfill has been continuously closed, ^{ORIGINAL} representing a period in excess of one year.
4. Initial hearings in this matter were held in December of 1984 and January of 1985. Additional testimony was taken in April of 1985. All testimony on the case was concluded at hearings held in September of 1985.
5. Attached hereto as Exhibit "A" is a copy of an inspection report from

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DER for an inspection which took place on October 23, 1985 at the Novak Sanitary Landfill. A review of the inspection report indicates that no violations whatsoever were found by the Department Inspector.

6. A portion of the Inspection Report affirmatively indicated that the large equipment items have been removed from the site, the site has been dressed up and vegetative cover has been established over approximately 80% of the site.

7. In the Inspection Report of October 23, 1985, the Department Inspector indicated his opinion that "...a decision on the fate of this site is desperately needed".

8. It is environmentally necessary that the operator be permitted to complete the filling of Trench 5 at the site.

9. One of the basic requirements for proper landfill management is the development of the site in a manner that enables surface water to be properly shed off the surface of the site. Trench 5 is partially excavated and has been in that condition for more than a year. It traps and holds water thereby preventing the surface water from being shed from the site and significantly increasing the volume of surface water that would penetrate the site.

10. In addition, the drainage swales and other important aspects relating to control of surface waters cannot be completed and implemented until resolution of the situation at Trench 5.

11. Portions of the required perimeter gas venting system also cannot be completed and implemented until the operator can proceed with Trench 5.

12. Without completion of the excavation of Trench 5, adequate soils do not exist on the site to properly close the site and to properly implement anticipated closure plan. The cost of purchasing and transporting the necessary volumes of soil from outside of the site is prohibitive and a practical impossibility.

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13. The operator will not be able to complete the trench fill portion of the site and establish and maintain the slopes and grades required by the existing plans without completing Trench 5. This is crucial to the fundamental goal of properly shedding surface water from the site.

14. There are in certain portions of the old mine area as well as the area fill portion of the site depressions which have developed and which must be filled. It has been proposed that certain types of demolition waste be used to fill the depressions and that they then be covered with an adequate and proper amount of soil to achieve the required final cover. The existing depressed areas at the site present a continuing environmental risk as a result of surface water that collects in the depressions. It is necessary that operations resume at the site so that these conditions can be corrected and that excavation resume in Trench 5 so that the necessary soils can be secured to provide final cover once the depressed areas have been filled with demolition waste.

15. There are portions of the site over which final cover was formerly applied which require repair work and/or the reapplication of final cover. It is necessary that the excavation of Trench 5 be completed so that the necessary soils can be secured.

16. A number of the soil and erosion projects required as part of the proposed closure plan will require additional soil for implementation. It is necessary that the excavation of Trench 5 be completed so that the necessary soil can be secured.

17. In its closure Order of December of 1984, the Department ^{ORIGINAL} asserted that the fifth trench in the trench fill area of the site could not be completed, even though five trenches were permitted by the permit, since the operator was allegedly locating Trench 5 at a location which was further south

of the location allegedly approved by the Department.

18. The foregoing position asserted by the Department in its Order was clearly not supported by the testimony. A review of the plans demonstrated that the only southern boundary specified in the permit or the approved plans was a requirement that the fifth trench be located at least 200 ft. from the southern boundary line of the trench fill area of the property. The Department, however, disregarded the boundary limitations set forth on the approved plans and instead asserted that Trench 5 was limited to a specified southerly distance from electric utility pole no. 10. The testimony indicated that nowhere in the Permit or on any of the approved plans was utility pole no. 10 designated as a boundary marker for the location of Trench 5. In fact, the 1982 Plan did not even identify pole no. 10.

19. At the hearings in December of 1984 and January of 1985, it was established that the location of each of the first four trenches were approved and accepted by DER personnel. The 26 monthly inspection reports introduced into the record contained no mention of any violation of boundary requirements by the operator. Indeed, the Department did not assert this position until the Fall of 1985.

20. The first four trenches actually constructed and Trench 5 as presently proposed by the operator, would have in the aggregate a smaller surface area than the five trenches approved by the Department. The greater distance from the northerly edge of Trench 1 to the southerly edge of proposed Trench 5 results from the operator maintaining a greater separation or buffer zone between the five trenches than the 6 ft. minimum separation shown on the plans. It is undisputed that the larger buffer zones actually maintained by the operator will not cause any environmental harm and to the contrary will provide a positive environmental benefit. The Department letter issued in the Summer of 1982

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concerning the five trenches contains a paragraph addressing the width of the buffer zone between the trenches. In that paragraph, the Department does not set forth a limit on the maximum width of the buffer zone. It only indicates that the minimum width of the buffer zone shall not be less than 8 ft.

21. The buffer zone between the trenches were established through the use of large earth moving pans which themselves are significantly wider than 8 ft., resulting in a buffer zone that itself was wider than 8 ft. Of course, all of this work was observed and inspected by representatives of the Department.

22. The Department then took a position that Trench 5 was not acceptable because the soil in the trench had not been tested to determine whether its depth and quality were sufficient for natural renovation trench filler. This position was advanced by the Department in spite of testimony that a test pit had been dug in proposed Trench 5 and that a second test pit had been dug in the buffer area between Trench 4 and proposed Trench 5. After the hearings were completed in January of 1985, a meeting was subsequently scheduled at the site and agreement was reached on the location of two new test pits in Trench 5. The test pits were subsequently dug and verified that both the quality of the soil and the depth of the soil were more than adequate.

23. An issue also arose concerning the actual location of the southern boundary. In order to resolve that item, the operator engaged a professional surveyor to stake and locate the southern property line. Furthermore, the operator agreed to maintain Trench 5 at least 220 ft. north of the southerly boundary line. This provided an additional 20 ft. over and above the 200 ft. setback required by the plans. The location of Trench 5 was then actually staked out on the site and was viewed by the Hearing Examiner during a site visit. A small portion of partially excavated Trench 5 was located outside of the 220 ft. setback and the operator agreed to fill in that portion.

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24. The Department then advanced a new contention that a sinkhole had developed within the area of a proposed retention basin on the site thus making the area unsuitable for use as a basin. This assertion was made without consulting with the experts engaged by the operator and without any site evaluation of the alleged sinkhole condition. Thereafter, a site meeting did take place between Mr. Manduke for the Department and Mr. Satterthwaite for the Operator. The alleged sinkhole was excavated, examined by the experts and agreement reached that it posed no risk or threat and that the location was suitable for its proposed use as a basin.

25. Land filling in the area filled portion of the site and the demolition portion of the site commenced with the issuance of the Permit back in 1972. In addition, filling under a mine reclamation permit had commenced the old mine area sometime in the 1960s. At the time of issuance of the 1972 Permit, a study was submitted to the Department by Dr. Meyers from Lehigh University setting forth his conclusion concerning the nature of the underlying bedrock. Almost thirteen years after issuance of the 1972 Permit, the Department for the first time asserted during the hearings that the underlying bedrock of the site was calcium carbonate containing little or no dolomite, that it was prone to solutioning, and that it was unsuitable for landfilling. This bold assertion was not substantiated by any credible or competent testimony. For example, the Department in arriving at its position made no test borings of the existing bedrock nor did its witnesses review the original test borings at the site or the logs kept by the well drillers for the various wells drilled at the site. Moreover, the data from the six monitoring wells at the site established that the water table was low yielding in nature and that the monitoring wells were relatively deep in depth. These conditions are inconsistent with the bedrock theory advanced by the Department. Moreover,

the Novak Landfill site contains an unusually deep layer of renovating soil, generally 50 ft. in depth, which renders the site especially suitable for a natural renovation landfill. The Department in its zeal to prevent completion of Trench 5 again appeared to be ignoring the site data on which it should be relying.

26. During the Summer of 1985, the Department asserted that the site was contaminating the groundwater. The actual well samples established that all of the six monitoring wells were clean with the exception of monitoring well 1-B. Two pipes of volatile organic chemicals were showing up in well 1-B at relatively low readings. The operator engaged a qualified experienced chemist to do an analysis of the condition in well 1-B as well as an investigative study to determine the source of the two chemicals found in the well.

27. As a result of extensive field investigation and analysis, it was determined that landfill gas was infiltrating and escaping through well 1-B and that a minute quantity of the gas was becoming soluble in the surface of the water standing on the bottom of well 1-B. That condition posed no risk of contamination of the groundwater in general underlying the site. The conditioning question was limited to the small quantity of water standing in the well and into which small quantities of the gas became soluble. In fact, on several occasions, well 1-B was dry and serious questions arose whether it even was monitoring ground water at the site. Most importantly, none of the other five monitoring wells showed any trace of the chemicals and demonstrated that the landfill was not adversely affecting the groundwater system underlying the site.

28. The experts called by the Department agreed that well 1-B was in fact venting landfill gas and did not contradict or disagree with the foregoing conclusion concerning the nature and source of the chemicals found in well 1-B.

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They also agreed that all of the other monitoring wells at the site were clean and showed no evidence of groundwater contamination.

29. It should be noted that early in the proceedings, the Department took the position that the landfill was contaminating an offsite well known as the Craemer Well which was located southwest of the site and at a considerable distance from the site. Several residences were located between the landfill and the Craemer Well, all of which experienced no well contamination problems. The six monitoring wells installed at the site clearly established that the groundwater flow at the site was from south to north. Accordingly, it was impossible for the site to contaminate the Craemer Well because of its location southwest of the site and at a considerable distance away from it. To the contrary, as the Hearing Examiner pointed out, a theory could be advanced that the Craemer Well was in fact contaminating the site.

30. It is suggested that the emphasis placed by the Department during the past year has been misplaced. The record establishes that Trench 5 should clearly be completed from an environmental point of view and that the depth and quality of the soil in Trench 5 is more than adequate. The well sampling results at the site show that there is no contamination of the groundwater system underlying the site. The goal of both the Department and the Operator should really be to complete Trench 5 in a proper manner and to approve and implement the measures necessary to properly close the trench fill portion of the site and to perform any corrective work needed in the remainder of the site. Although a conceptual closure plan was submitted in behalf of the Operator in December of 1964, the Department never formally responded to it. In addition, although a soil and erosion plan was

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submitted on behalf of the Operator at least two years ago, the Department provided no written response to it until September of 1985.

31. It is time to emphasize and concentrate on the things which really matter. It would be illogical and environmentally harmful not to complete Trench 5 and there is no basis in law or in fact for such a result. The completion of Trench 5 is essential to the proper closure of the trench fill portion of the site as well as the closure work required in the remainder of the site. It is likewise true that a failure to complete Trench 5 will certainly ensure the overall deterioration of the site and will certainly pose a substantial risk of environmental damage at the site.

WHEREFORE, the Petitioners respectfully request that a supersedeas be granted immediately from the Department Order of December of 1984 permitting operations to resume at the site.

FOX, DIFFER, CALLAHAN, ULRICH & O'HARA

By: 

MICHAEL J. SHERIDAN, ESQUIRE
Attorneys for the Petitioners

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NORRISTOWN

JAN 31 1986

ENVIRONMENTAL HEARING BOARD
Third Floor
221 North Second Street
Harrisburg, Pennsylvania 17101

LOUIS J. NOVAK, SR.,	:	DOCKET NO. 84-425-M
HILDA NOVAK,	:	
NOVAK SANITARY LANDFILL, INC.	:	
	:	
VS.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL RESOURCES:	:	
APPELLEE	:	

CERTIFICATION OF SERVICE

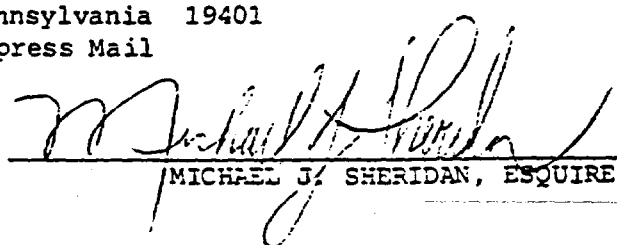
I, MICHAEL J. SHERIDAN, counsel for Appellants, hereby certify that
a true and correct copy of the foregoing Petition for Supersedeas was served
on the following in the following manner on January 30, 1986:

Environmental Hearing Board
221 North Second Street
Third Floor
Harrisburg, Pennsylvania 17101
Three Copies by Express Mail

Bureau of Litigation
P.O. Box 2357
508 Executive House
101 South Second Street
Harrisburg, Pennsylvania 17120
One Copy by Express Mail

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Mr. Wayne, L. Lynn
Regional Solid Waste Manager
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Norristown, Pennsylvania 19401
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MICHAEL J. SHERIDAN, ESQUIRE

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(Red)

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ROBERT W. HONEYMAN
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OF COUNSEL

February 6, 1986

DER-RECEIVED
NORRISTOWN

FEB 7 1986

Honorable Maxine Woelfling
Environmental Hearing Board
221 North Second Street, Third Floor
Harrisburg, Pennsylvania 17101

Re: Novak vs. DER
Docket No. 84-425-M

Dear Judge Woelfling:

On January 31, 1986, I filed a Petition for Supersedeas on behalf of the Appellants in the above matter. Enclosed please find an Amended Petition for Supersedeas.

The above case was originally heard by Judge Mazullo. An original Petition for Supersedeas was filed in December of 1984. Although a hearing was held, no decision was ever rendered on the Petition for Supersedeas. Final hearings on this matter were held in September of 1985, the testimony was completed, and proposed Findings of Fact were filed.

I don't believe that it will be necessary to introduce additional testimony since the record has been completed. The only item that we would seek to introduce is the most recent DER Inspection Report of the site which is attached as an exhibit to the Amended Petition. I have spoken to Ken Gelburd in that regard and, if he agrees, we would not need a hearing but would only require oral argument on the Petition. The site has been closed for more than a year and accordingly we would be anxious to schedule a date for argument on the Petition as soon as possible. We would, of course, be more than happy to travel to Harrisburg for argument if that would help expedite the matter.

It would be appreciated if either yourself or a member of our staff would contact me for the purpose of scheduling this matter.

Very truly yours,


MICHAEL J. SHERIDAN

MJS:mb

Enclosures

cc: Bureau of Litigation

✓ Mr. Wayne L. Lynn

Department of Environmental Resources

Kenneth A. Gelburd, Asst. Counsel

Department of Environmental Resources

Martin J. Karess, Esq.

201173

ENVIRONMENTAL HEARING BOARD
Third Floor
221 North Second Street

LOUIS J. NOVAK, SR., : DOCKET NO. 84-425-M
HILDA NOVAK, :
NOVAK SANITARY LANDFILL, INC. :
VS. : ATTORNEY I.D. #09301
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF ENVIRONMENTAL RESOURCES :
APPELLEE

AMENDED PETITION FOR SUPERSEDEAS

AND NOW comes the Appellants through their attorneys, Fox, Differ, Callahan, Ulrich & O'Hara, Esquires, and respectfully petition for supersedeas staying enforcement of the below described Order as follows:

1. Appellants are Louis J. Novak, Sr., Hilda Novak and Novak Sanitary Landfill, Inc. The address of Appellants is R. D. 1, Box 268, Allentown, Pennsylvania 18104.

2. On December 13, 1984, Wayne L. Lynn, Regional Solid Waste Manager of the Department of Environmental Resources issued an Order directed against Appellants. The Order was served on Appellants on December 14, 1984. A copy of the Order is attached hereto.

3. Pursuant to the Order, operations at the landfill ceased on December 17, 1984. Since that time, the landfill has been continuously closed, representing a period in excess of one year.

4. Initial hearings in this matter were held in December of 1984 and January of 1985. Additional testimony was taken in April of 1985. All testimony on the case was concluded at hearings held in September of 1985.

5. Attached hereto as Exhibit "A" is a copy of an inspection report from

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DER for an inspection which took place on October 23, 1985 at the Novak Sanitary Landfill. A review of the inspection report indicates that no violations whatsoever were found by the Department Inspector.

6. A portion of the Inspection Report affirmatively indicated that the large equipment items have been removed from the site, the site has been dressed up and vegetative cover has been established over approximately 80% of the site.

7. In the Inspection Report of October 23, 1985, the Department Inspector indicated his opinion that "...a decision on the fate of this site is desperately needed".

8. It is environmentally necessary that the operator be permitted to complete the filling of Trench 5 at the site.

9. One of the basic requirements for proper landfill management is the development of the site in a manner that enables surface water to be properly shed off the surface of the site. Trench 5 is partially excavated and has been in that condition for more than a year. It traps and holds water thereby preventing the surface water from being shed from the site and significantly increasing the volume of surface water that would penetrate the site.

10. In addition, the drainage swales and other important aspects relating to control of surface waters cannot be completed and implemented until resolution of the situation at Trench 5.

11. Portions of the required perimeter gas venting system also cannot be completed and implemented until the operator can proceed with Trench 5.

12. Without completion of the excavation of Trench 5, adequate soils not exist on the site to properly close the site and to properly implement the anticipated closure plan. The cost of purchasing and transporting the necessary volumes of soil from outside of the site is prohibitive and a practical impossibility.

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13. The operator will not be able to complete the trench fill portion of the site and establish and maintain the slopes and grades required by the existing plans without completing Trench 5. This is crucial to the fundamental goal of properly shedding surface water from the site.

14. There are in certain portions of the old mine area as well as the area fill portion of the site depressions which have developed and which must be filled. It has been proposed that certain types of demolition waste be used to fill the depressions and that they then be covered with an adequate and proper amount of soil to achieve the required final cover. The existing depressed areas at the site present a continuing environmental risk as a result of surface water that collects in the depressions. It is necessary that operations resume at the site so that these conditions can be corrected and that excavation resume in Trench 5 so that the necessary soils can be secured to provide final cover once the depressed areas have been filled with demolition waste.

15. There are portions of the site over which final cover was formerly applied which require repair work and/or the reapplication of final cover. It is necessary that the excavation of Trench 5 be completed so that the necessary soils can be secured.

16. A number of the soil and erosion projects required as part of the proposed closure plan will require additional soil for implementation. It is necessary that the excavation of Trench 5 be completed so that the necessary soil can be secured.

17. In its closure Order of December of 1984, the Department ^{ORIGINAL} _(R-11) asserted that the fifth trench in the trench fill area of the site could not be completed, even though five trenches were permitted by the permit, since the operator was allegedly locating Trench 5 at a location which was further south

of the location allegedly approved by the Department.

18. The foregoing position asserted by the Department in its Order was clearly not supported by the testimony. A review of the plans demonstrated that the only southern boundary specified in the permit or the approved plans was a requirement that the fifth trench be located at least 200 ft. from the southern boundary line of the trench fill area of the property. The Department, however, disregarded the boundary limitations set forth on the approved plans and instead asserted that Trench 5 was limited to a specified southerly distance from electric utility pole no. 10. The testimony indicated that nowhere in the Permit or on any of the approved plans was utility pole no. 10 designated as a boundary marker for the location of Trench 5. In fact, the 1982 Plan did not even identify pole no. 10.

19. At the hearings in December of 1984 and January of 1985, it was established that the location of each of the first four trenches were approved and accepted by DER personnel. The 26 monthly inspection reports introduced into the record contained no mention of any violation of boundary requirements by the operator. Indeed, the Department did not assert this position until the Fall of 1985.

20. The first four trenches actually constructed and Trench 5 as presently proposed by the operator, would have in the aggregate a smaller surface area than the five trenches approved by the Department. The greater distance from the northerly edge of Trench 1 to the southerly edge of proposed Trench 5 results from the operator maintaining a greater separation or buffer zone between the five trenches than the 8 ft. minimum separation shown on the plans. It is ^{ORIGINAL} (red) disputed that the larger buffer zones actually maintained by the operator will not cause any environmental harm and to the contrary will provide a positive environmental benefit. The Department letter issued in the Summer of 1982

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concerning the five trenches contains a paragraph addressing the width of the buffer zone between the trenches. In that paragraph, the Department does not set forth a limit on the maximum width of the buffer zone. It only indicates that the minimum width of the buffer zone shall not be less than 8 ft.

21. The buffer zone between the trenches were established through the use of large earth moving pans which themselves are significantly wider than 8 ft., resulting in a buffer zone that itself was wider than 8 ft. Of course, all of this work was observed and inspected by representatives of the Department.

22. The Department then took a position that Trench 5 was not acceptable because the soil in the trench had not been tested to determine whether its depth and quality were sufficient for natural renovation trench filler. This position was advanced by the Department in spite of testimony that a test pit had been dug in proposed Trench 5 and that a second test pit had been dug in the buffer area between Trench 4 and proposed Trench 5. After the hearings were completed in January of 1985, a meeting was subsequently scheduled at the site and agreement was reached on the location of two new test pits in Trench 5. The test pits were subsequently dug and verified that both the quality of the soil and the depth of the soil were more than adequate.

23. An issue also arose concerning the actual location of the southern boundary. In order to resolve that item, the operator engaged a professional surveyor to stake and locate the southern property line. Furthermore, the operator agreed to maintain Trench 5 at least 220 ft. north of the southern boundary line. This provided an additional 20 ft. over and above the 200 ft. setback required by the plans. The location of Trench 5 was then actually staked out on the site and was viewed by the Hearing Examiner during a site visit. A small portion of partially excavated Trench 5 was located outside of the 220 ft. setback and the operator agreed to fill in that portion.

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24. The Department then advanced a new contention that a sinkhole had developed within the area of a proposed retention basin on the site thus making the area unsuitable for use as a basin. This assertion was made without consulting with the experts engaged by the operator and without any site evaluation of the alleged sinkhole condition. Thereafter, a site meeting did take place between Mr. Manduke for the Department and Mr. Satterthwaite for the Operator. The alleged sinkhole was excavated, examined by the experts and agreement reached that it posed no risk or threat and that the location was suitable for its proposed use as a basin.

25. Land filling in the area filled portion of the site and the demolition portion of the site commenced with the issuance of the Permit back in 1972. In addition, filling under a mine reclamation permit had commenced the old mine area sometime in the 1960s. At the time of issuance of the 1972 Permit, a study was submitted to the Department by Dr. Meyers from Lehigh University setting forth his conclusion concerning the nature of the underlying bedrock. Almost thirteen years after issuance of the 1972 Permit, the Department for the first time asserted during the hearings that the underlying bedrock of the site was calcium carbonate containing little or no dolomite, that it was prone to solutioning, and that it was unsuitable for landfilling. This bold assertion was not substantiated by any credible or competent testimony. For example, the Department in arriving at its position made no test borings of the existing bedrock nor did its witnesses review original test borings at the site or the logs kept by the well drillers for the various wells drilled at the site. Moreover, the data from the six monitoring wells at the site established that the water table was low yielding in nature and that the monitoring wells were relatively deep in depth. These conditions are inconsistent with the bedrock theory advanced by the Department. Moreover,

the Novak Landfill site contains an unusually deep layer of renovating soil, generally 50 ft. in depth, which renders the site especially suitable for a natural renovation landfill. The Department in its zeal to prevent completion of Trench 5 again appeared to be ignoring the site data on which it should be relying.

26. During the Summer of 1985, the Department asserted that the site was contaminating the groundwater. The actual well samples established that all of the six monitoring wells were clean with the exception of monitoring well 1-B. Two types of volatile organic chemicals were showing up in well 1-B at relatively low readings. The operator engaged a qualified experienced chemist to do an analysis of the condition in well 1-B as well as an investigative study to determine the source of the two chemicals found in the well.

27. As a result of extensive field investigation and analysis, it was determined that landfill gas was infiltrating and escaping through well 1-B and that a minute quantity of the gas was becoming soluble in the surface of the water standing on the bottom of well 1-B. That condition posed no risk of contamination of the groundwater in general underlying the site. The condition in question was limited to the small quantity of water standing in the well and into which small quantities of the gas became soluble. In fact, on several occasions, well 1-B was dry and serious questions arose whether it even was monitoring ground water at the site. Most importantly, none of the other five monitoring wells showed any trace of the chemicals and demonstrated that the landfill was not adversely affecting the groundwater system underlying the site.

28. The experts called by the Department agreed that well 1-B was venting landfill gas and did not contradict or disagree with the foregoing conclusion concerning the nature and source of the chemicals found in well 1-B.

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They also agreed that all of the other monitoring wells at the site were clean and showed no evidence of groundwater contamination.

29. It should be noted that early in the proceedings, the Department took the position that the landfill was contaminating an offsite well known as the Craemer Well which was located southwest of the site and at a considerable distance from the site. Several residences were located between the landfill and the Craemer Well, all of which experienced no well contamination problems. The six monitoring wells installed at the site clearly established that the groundwater flow at the site was from south to north. Accordingly, it was impossible for the site to contaminate the Craemer Well because of its location southwest of the site and at a considerable distance away from it. To the contrary, as the Hearing Examiner pointed out, a theory could be advanced that the Craemer Well, was in fact contaminating the site.

30. It is suggested that the emphasis placed by the Department during the past year has been misplaced. The record establishes that Trench 5 should clearly be completed from an environmental point of view and that the depth and quality of the soil in Trench 5 is more than adequate. The well sampling results at the site show that there is no contamination of the groundwater system underlying the site. The goal of both the Department and the Operator should really be to complete Trench 5 in a proper manner and to approve and implement the measures necessary to properly close the trench fill portion of the site and to perform any correction work needed in the remainder of the site. Although a conceptual closure plan was submitted in behalf of the Operator in December of 1984, the Department never formally responded to it. In addition, although a soil and erosion plan was

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submitted on behalf of the Operator at least two years ago, the Department provided no written response to it until September of 1985.

31. It is time to emphasize and concentrate on the things which really matter. It would be illogical and environmentally harmful not to complete Trench 5 and there is no basis in law or in fact for such a result. The completion of Trench 5 is essential to the proper closure of the trench fill portion of the site as well as the closure work required in the remainder of the site. It is likewise true that a failure to complete Trench 5 will certainly ensure the overall deterioration of the site and will certainly pose a substantial risk of environmental damage at the site.

32. A Petition for Supersedeas may be filed at any time by Appellants.
25 Pa. Code §21.76.

33. Appellants believe and therefore aver that the testimony of record in the above captioned appeal satisfies the considerations under 25 Pa. Code §21.78 and establishes the following:

(a) That no injury to the public will result from granting the requested supersedeas and, to the contrary, that environmental benefits would result from the entry of the requested supersedeas;

(b) That Appellants should prevail on the merit upon final adjudication of the appeal;

(c) This site has not created a nuisance and significant pollution or hazard to health or safety would not exist or be threatened by a reopening of the site.

34. If the Order is not superseded as requested, Appellants will sustain

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irreparable harm. The Order violates the existing rights of Appellants to operate at the site. The premature closing of the site has led to significant financial damage to the business enterprise of Appellants at the site and continuation thereof will lead to further financial ruin. Continued closure of the site will prevent proper completion of Trench 5 as well as performance of necessary work at the site, and will also prevent proper implementation of a closure plan with respect to appropriate areas of the site.

WHEREFORE, Appellants pray for entry of a supersedeas staying enforcement of the Order pending resolution of the Appeal.

FOX, DIFFER, CALLAHAN, ULRICH & O'HARA

By: 

MICHAEL J. SHERIDAN, ESQUIRE
Attorneys for Petitioners

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COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF LEHIGH)

SS:

I, LOUIS J. NOVAK, being duly sworn according to law, depose and state that I am President of Novak Sanitary Landfill, Inc., and that as such officer am authorized to make this affidavit on its behalf, and that the facts set forth in the foregoing PETITION are true and correct to the best of my knowledge, information and belief.

Louis J. Novak
LOUIS J. NOVAK
PRESIDENT

SWORN TO and subscribed

before me this 4th day

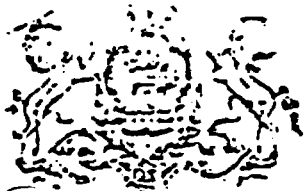
of February, 1986.

Bonnie L. Pletcher
NOTARY PUBLIC

MY COMMISSION EXPIRES: 9-26-88

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

1875 New Hope Street
Norristown, PA 19401
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December 13, 1984

IN THE MATTER OF:

Louis J. Novak, Sr.	:	Solid Waste Disposal Facility
Hilda Novak	:	Permit No. 100534
Novak Sanitary Landfill, Inc.	:	
South Whitehall Township	:	
Lehigh County	:	

ORDER AND CIVIL PENALTY ASSESSMENT

Now this thirteenth day of December, 1984, the Commonwealth of Pennsylvania, Department of Environmental Resources ("Department") has made the following determinations:

- A. Louis J. Novak, Sr. ("Louis") and Hilda Novak ("Hilda") own a solid waste disposal site ("Novak Landfill") on Orefield Road in South Whitehall Township, Lehigh County.
- B. Louis and Hilda are corporate officers of Novak Sanitary Landfill, Incorporated ("NSL"), a Pennsylvania corporation doing business at the Novak Landfill.
- C. Louis and NSL operate Novak Landfill.
- D. Louis, Hilda and NSL are herein collectively referred to as "Novak".
- E. On March 24, 1972, the Department issued to Louis, Solid Waste Management Permit Number 100534 for the operation of a natural renovation type of sanitary landfill for the disposal of municipal waste.
- F. On September 15, 1982, the Department amended permit number 100534 to allow for installation and operation of a methane gas venting system at the Novak Landfill.
- G. Since at least July 14, 1982, and observed by the Department during seven (7) inspections, the Novak Landfill exceeded the final vertical elevations and lateral boundaries allowed by Solid Waste Management Permit Number 100534 in violation of Sections 201, 610(1), 610(2) and 610(4) of the Solid Waste Act, 35 P.S. §§ 6018.201, 6018.610(1), 6018.610(2) and 6018.610(4).
- H. The original design concept of the Novak Landfill, in accordance with 25 Code Chapter 75, was based on maintaining a 1:1 ratio of depth of renovating soil beneath the landfill to depth of solid waste in the landfill, to reno-

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vate any leachate generated by the landfill before it enters groundwater. The approved final elevations were designed to maintain this ratio. By exceeding the approved final elevations, the Novak Landfill threatens to produce leachate whose quantity and quality would exceed the renovating capacity of the soil beneath the landfill and contaminate groundwater.

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- I. The existing groundwater monitoring system at the Novak Landfill is inadequate under the requirements of the Solid Waste Act and the Clean Streams Law. Specifically, wells Nos. 5 and 6 were required by the approved plans to have been installed prior to any disposal on the trench area of the Novak Landfill, and were to have been sampled quarterly with the analysis results submitted to the Department. Disposal operations on the trench area commenced on August 30, 1982 and these wells were not installed until November 7, 1984. The results of sampling these wells have not been submitted to the Department. Said sample results represent a portion of the data needed for the Department to assess whether additional groundwater monitoring is necessary at the Novak Landfill in order to provide an acceptable groundwater monitoring system.
- J. As a result of, inter alia, excessive deposits of waste, Novak Landfill is causing or threatening to cause pollution of groundwater, a water of the Commonwealth, with leachate, an industrial waste as defined in Section 1 of the Clean Streams Law, 35 P.S. §691.1, and a solid waste as defined in Section 103 of the Solid Waste Management Act, 35 P.S. §6018.103.
- K. From at least March 12, 1982, until the date of this Order, and observed by the Department during 38 inspections, the most recent of which was on October 9, 1984, completed portions of the Novak Landfill have not received adequate final earth cover and have not been properly graded and vegetated in violation of 25 Pa. Code 75.24(c)(2)(xxi) and (xxii), 75.26(o), and 75.26(p) and, therefore, in violation of Section 610(2), 610(4) and 610(9) of the Solid Waste Act, 35 P.S. §§ 6018.610(2), 6018.610(4), and 6018.610(9).
- L. From at least March 12, 1982, until the date of this Order, surface water at the Novak Landfill has not been managed to minimize its percolation into the solid waste deposits. Specifically, the Novak Landfill is graded such that surface water cannot drain off many areas, and Department inspections on 22 occasions, the most recent of which were on July 19, 1984 and October 9, 1984, found depressions or surface water ponded on the landfill. This improper management of surface water is in violation of 25 Pa. Code 75.24(c)(2)(xviii) and therefore in violation of Sections 610(2), 610(4) and 610(9) of the Solid Waste Act 35 P.S. §§ 6018.610(2), 6018.610(4), and 6018.610(9). ORIGINAL
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- M. Novak has engaged in earth moving activities at the Novak Landfill. The erosion and sedimentation controls at the Novak Landfill are not adequate to meet the requirements of 25 Pa. Code Chapters 75 and 102 of the Rules and Regulations of the Department. Novak does not have an erosion and sedimen-

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tation control plan in violation of 25 Pa. Code Chapter 102.4 and, therefore, in violation of Sections 402(a) and 611 of the Clean Streams Law, 35 P.S. §§691.402(a) and 691.611.

- N. Novak has not completed installation of the gas venting system required by Solid Waste Management Permit Number 100534.
- O. Novak has not operated the Novak Landfill in accordance with 25 Pa. Code Chapter 75 of the Rules and Regulations of the Department. Specifically, Department inspections of the Novak Landfill on March 12, 1982, April 12, 1982, July 14, 1982, October 13, 1982, October 27, 1982, December 8, 1982, January 6, 1983, February 28, 1983, March 15, 1983, April 14, 1983, April 29, 1983, June 3, 1983, June 23, 1983, August 2, 1983, April 3, 1984, April 27, 1984, November 30, 1984 and December 7, 1984, have found that adequate daily cover material has not been provided at the Novak Landfill in violation of 25 Pa. Code 75.26(1) and therefore in violation of Sections 610(2), 610(4), and 610(9) of the Solid Waste Act, 35 P.S. §§ 6018.610(2), 6018.610(4), and 6018.610(9).
- P. The Department has determined that Novak has not filed a collateral bond for the land occupied by the Novak Landfill as required by Section 505(a) of the Solid Waste Act, 35 P.S. §6018.505(a).
- Q. The aforementioned violations and conditions at the Novak Landfill constitute a statutory public nuisance pursuant to Section 601 of the Solid Waste Act, 35 P.S. § 6018.601 and Sections 307 and/or 401 of the Clean Streams Law, 35 P.S. §§ 691.307 and 691.401.
- R. The aforementioned violations and conditions at the Novak Landfill constitute a common law public nuisance and constitute a danger to public health and safety and to the environment, and are unlawful pursuant to Sections 610 of the Solid Waste Act, 35 P.S. §6018.610, and Section 611 of the Clean Streams Law, 35 P.S. § 691.611.

NOW, THEREFORE, on this thirteenth day of December, 1984 pursuant to Sections 104(7), 104(13), 201, 505, 601, 602, 610(1), 610(2), 610(4), and 610(9) of the Pennsylvania Solid Waste Management Act, the Act of July 7, 1980, No. 97, P.L. 380, 35 P.S. §§ 6018.104(7), 6018.104(13), 6018.201, 6018.505, 6018.601, 6018.602, 6018.610(1), 6018.610(2), 6018.610(4), and 6018.610(9); Sections 301, 307, 316, 401, 610 and 611 of the Pennsylvania Clean Streams Law, the Act of June 22, 1937, P.L. 1957, as amended, 35 P.S. §§ 691.301, 691.307, 691.316, 691.401, 691.610, and 691.611; and § 1917-A of the Administrative Code of 1929, the Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17 it is hereby ordered that Louis J. Novak, Sr., Hilda Novak, Louis and Hilda Novak as husband and wife, and Novak Sanitary Landfill, Inc. (collectively, Novak) are and shall be jointly and severally liable to do the following:

1. Novak shall cease all solid waste disposal operations at the Novak Landfill by 12:01 A.M., Monday, December 17, 1984.

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2. Novak shall close the Novak Landfill in accordance with 25 Pa. Code Chapter 75 and the following schedule:
 - A. Novak shall complete covering the Novak Landfill with two feet of final cover soil by December 29, 1984.
 - B. Novak shall grade the Novak Landfill in accordance with permit No. 100534, or as approved by the Department by January 31, 1985.
 - C. Novak shall complete installation of the approved gas venting system by January 31, 1985.
 - D. Novak shall seed and stabilize all disturbed areas of the Novak Landfill by March 31, 1985.
 - E. By January 15, 1985 Novak shall submit for Department modification or approval, an erosion and sedimentation control plan developed in accordance with 25 Pa. Code Chapters 75 and 102 and approved by the Soil Conservation Service. Said plan shall include an implementation schedule providing for completion of construction of necessary erosion and sedimentation control facilities by no later than March 15, 1985.
 - F. By March 1, 1985 Novak shall develop and submit for Department modification or approval, a post closure maintenance plan.
 - G. Upon Department approval or approval with modification, Novak shall implement the approved or modified plans in paragraphs 4E and 4F. Said approved or modified plans are hereby incorporated and enforceable as part of this order.
3. Novak shall submit to the Department, within five (5) days of receiving them, the results of the recent sampling of wells Nos. 5 and 6. Novak shall continue to sample all of the Novak Landfill monitoring wells quarterly and submit the results to the Department in accordance with 25 Pa. Code Chapter 75 and the approved plans.
4. Novak shall immediately implement temporary erosion and sedimentation controls until the erosion and sedimentation plan specified in paragraph 2E herein, is approved and implemented. Such controls may include, but shall not be limited to construction of ditches to divert runoff to sedimentation basins and use of straw bales.
5. By no later than December 31, 1984 Novak shall retain a qualified hydrogeologist and submit to the Department for modification or approval, a work plan describing the scope and methods of the hydrogeologic study to determine the extent and impact of groundwater contamination at and in the vicinity of the Novak Landfill. The work plan shall consider the need for additional wells and/or the use of existing off-site private wells. The work plan shall: include target dates for completion of the various tasks

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comprising the study; and a final report with recommendations. The scope of the study shall include, as a minimum:

- A. Listings of groundwater flows and directions.
- B. Fracture trace and sinkhole analysis of site and surroundings.
- C. Effect of the nearby abandoned mine on groundwater flow.
- D. Analysis of potential for groundwater mounding.
- E. Analysis of groundwater quality.
- F. Definition of the present nature and extent of groundwater pollution.
- V G. Evaluation of the potential for further spread of groundwater pollution.
- H. Rate of discharge and extent of any contamination.
- I. Definition of all sources of the pollution and a description of the means and methods proposed or used for the elimination of said sources.
- J. Evaluation of alternatives available to return the soil and groundwater to their natural qualities.
- K. The groundwater quality monitoring program which will allow for evaluation of long term groundwater quality conditions and which will insure the protection of the public health.
- L. The conclusions and proposed actions to return soil and groundwater to their natural quality and a schedule for accomplishing such actions.

Novak shall conduct the hydrogeologic study upon the Department's approval or approval with modification of the work plan.

- 6. Upon the Department's approval or approval with modification of the study's final report Novak shall immediately take such action to determine necessary by the report or the Department's modification thereof, to eliminate soil and groundwater pollution. Said approved or modified final report is hereby incorporated and enforceable as part of this Order.
- 7. By no later than December 31, 1984, Novak shall submit to the Department an acceptable bond on forms provided by the Department for the closure of Novak Landfill. The bond shall comply with the requirements of Section 505 of the Solid Waste Act, shall be in the amount of \$300,000.00 and shall name the Commonwealth of Pennsylvania as obligee.

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CIVIL PENALTY ASSESSMENT

The Department has the power and authority to assess civil penalties for each and every violation of the Solid Waste Act and the Rules and Regulation promulgated thereunder, and an amount no greater than \$25,000.00 per violation per day: 35 P.S. § 6018.605. In assessing a civil penalty for the violations specified herein, the Department has considered the following relevant factors: willfulness of the violations, damage to air, water, land or other natural resources of the Commonwealth or their uses, and cost of the Commonwealth of investigating the violations.

NOW, THEREFORE, pursuant to Sections 605 of the Solid Waste Act, 35 P.S. § 6018.605, the Department hereby assesses upon Louis J. Novak, Sr., Hilda Novak, Louis and Hilda Novak as husband and wife, and Novak Sanitary Landfill (collectively Novak) the following Civil Penalty.

1. For exceeding the final vertical elevations and lateral boundaries allowed by Solid Waste Management Permit Number 100534 in violation of Sections 201, 610(1), 610(2) and 610(4) of the Solid Waste Act, 35 P.S. §§ 6018.201, 6018.610(1), 6018.610(2) and 6018.610(4), Novak is assessed a civil penalty of \$15,000.00.
2. For maintaining a groundwater monitoring system not meeting the requirements of the Solid Waste Act and the Clean Streams Law, and not in accordance with the approved permit plans, in violation of Sections 610(4) and 610(9) of the Solid Waste Act, 35 P.S. §§ 6018.610(4) and 6018.610(9), on October 31, 1984, Novak is assessed a Civil Penalty of \$10,000.00.
3. For maintaining inadequate final cover, improper slopes and inadequate vegetation on completed portions of the Novak Landfill on October 9, 1984, in violation of 25 Pa. Code 75.24(c)(2)(xxi) and (xxii), 75.26(o), and 75.26(p) and, therefore, in violation of Section 610(2), 610(4) and 610(9) of the Solid Waste Act, 25 P.S. §§ 6018.610(2), 6018.610(4), and 6018.610(9), Novak is assessed a Civil Penalty of \$6,000.00.
4. For the improper management of surface water at the Novak Landfill on July 19, 1984 and October 9, 1984, in violation of 25 Pa. Code 75.24(c)(2)(xviii) and therefore in violation of Sections 610(2), and 610(4) and 610(9) of the Solid Waste Act 25 P.S. §§ 6018.610(2), and 6018.610(4), and 6018.610(9), Novak is assessed a Civil Penalty of \$6,000.00.
5. For not providing adequate daily cover on March 12, 1982, April 12, 1982, July 14, 1982, October 13, 1982, October 27, 1982, December 8, 1982, January 6, 1983, February 28, 1983, March 15, 1983, April 14, 1983, April 29, 1983, June 3, 1983, June 23, 1983, August 2, 1983, April 3, 1984, April 27, 1984, November 30, 1984 and December 7, 1984,

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in violation of 25 Pa. Code 75.26(1) and therefore in violation of Sections 610(2), 610(4), and 610(9) of the Solid Waste Act, 35 P.S. §§ 6018.610(2), 6018.610(4), and 6018.610(9). Novak is assessed a civil penalty of \$9,000.00.

Total Civil Penalty of \$46,000.00.

This penalty shall be paid to the Commonwealth of Pennsylvania - Solid Waste Abatement Fund and shall be forwarded within 30 days of receipt of this order and civil penalty assessment to the Pennsylvania Department of Environmental Resources, Bureau of Solid Waste Management, 1875 New Hope Street, Norristown, Pennsylvania 19401, Attention: Wayne L. Lynn, Regional Solid Waste Manager. The assessment of the foresaid civil penalty shall not waive the rights of the Department to proceed with any other remedy at law or in equity for the offense as specified herein.

This action of the Department may be appealable to the Environmental Hearing Board, Third Floor, 221 N. Second Street, Harrisburg, PA 17101, (717-787-3483) by any aggrieved person pursuant to Section 1921-A of the Administrative Code of 1929, 71 P.S. Section 510-21; and the Administrative Agency Law, 2 Pa. C.S., Chapter 5A. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the regulations governing practice and procedure before the Board may be obtained from the Board. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

12/13/84
DATE

BY:

Wayne L. Lynn
WAYNE L. LYNN
REGIONAL SOLID WASTE MANAGER

SWMCOA/16.2

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ENVIRONMENTAL HEARING BOARD
Third Floor
221 North Second Street
Harrisburg, Pennsylvania 17101

LOUIS J. NOVAK, SR., : DOCKET NO. 84-425-M
HILDA NOVAK, :
NOVAK SANITARY LANDFILL, INC. :
VS. :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL RESOURCES:

CERTIFICATION OF SERVICE

I, MICHAEL J. SHERIDAN, counsel for Appellants, hereby certify that a true and correct copy of the foregoing Amended Petition for Supersedeas was served on the following in the following manner on February 6, 1986:

Environmental Hearing Board
221 North Second Street
Third Floor
Harrisburg, Pennsylvania 17101
Three Copies by Express Mail

Bureau of Litigation
P.O. Box 2357
508 Executive House
101 South Second Street
Harrisburg, Pennsylvania 17120
One Copy by Express Mail

Mr. Wayne L. Lynn
Regional Solid Waste Manager
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Norristown, Pennsylvania 19401
One Copy by Express Mail

Kenneth A. Gelburd, Assistant Counsel
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Office of Chief Counsel
1314 Chestnut Street, 12th Floor
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MICHAEL J. SHERIDAN, ESQUIRE

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